IT IS SO ORDERED.

Dated: June 20, 2024

Guy R. Humphrey
United States Bankruptcy Judge

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

In re:	:	
JEFFERY A. VAUGHN,	:	Case Nos. 23-30280 & 23-31636
	:	Chapter 13
Debtor.	:	Judge Humphrey
	:	

DECISION GRANTING IN PART AND DENYING IN PART APPLICATIONS FOR ATTORNEY FEES (NO. 23-30280, DOC. 55; NO. 23-31636, DOC. 27), INCLUDING EXAMINATION OF COMPLIANCE WITH 11 U.S.C. §§ 1325(a)(9) AND 1308

I. Introduction

This matter is before the court on the *Amended Application for Compensation* (No. 23-30280, Doc. 55) filed on December 18, 2023, in Case No. 23-30280 (the "First Application"[1]) and the *Application for Compensation* (No. 23-31636, Doc. 27) filed on January 17, 2024, in Case No. 23-31636 (the "Second Application," and collectively with the First Application, the "Applications"). The Applications seek attorney fees in the total amount of $13,086 for services rendered prepetition and preconfirmation by G. Timothy Dearfield and his law firm (individually

[1] In Case No. 23-30280, Dearfield amended the original application (Doc. 49), which was seeking $11,856. For purposes of this decision, the court shall refer to both the original application (Doc. 49) and the amended application (Doc. 55) as the "First Application," when appropriate.

and collectively, "Dearfield"), counsel for Jeffery A. Vaughn (the "Debtor"). Both Applications were filed after preconfirmation dismissals, and therefore, the Chapter 13 no-look fee for the Southern District of Ohio does not apply pursuant to Local Bankruptcy Rule 2016-1(b)(5)(A).

The Applications present the following issues:

1. Whether attorney fees can or should be awarded in excess of the attorney's disclosure of compensation made pursuant to 11 U.S.C. § 329(a) and Federal Rule of Bankruptcy Procedure 2016(b).

2. How much should a court award in attorney fees for two related and consecutively filed Chapter 13 cases, the first of which was dismissed prior to confirmation of a plan due to the Debtor's failure to file prepetition tax returns; and the second of which was dismissed prior to confirmation due to the Debtor's failure to attend the 341 meeting of creditors and failure to commence Chapter 13 payments (also without the filing of the prepetition tax returns which were not filed prior to the dismissal of the Debtor's first case)?

3. Should the United States Court of Appeals for the Sixth Circuit's decision in *In re Village Apothecary*, 45 F.4th 940 (6th Cir. 2022) be applied to these Chapter 13 cases? That is, to what extent, if any, should the results obtained in these Chapter 13 cases be considered in determining the appropriate amount of counsel's attorney fees?

4. What attorney and paraprofessional fees are compensable related to preparing an attorney's fee application in a Chapter 13 case?

Finally, the cases present additional issues as to the procedures which should be followed by the Chapter 13 Trustee when the Debtor has not filed prepetition tax returns required to be filed under 11 U.S.C. § 1308.

II. Facts and Procedural Background

A. Case No. 23-30280

The Debtor filed his Chapter 13 petition on February 24, 2023. Doc. 1.[2] On February 27, 2023, the court notified the Debtor and Dearfield that the Debtor's filing was deficient and ordered

[2] Docket references within this subsection refer to Case No. 23-30280.

that missing required forms be filed within 14 days of the petition filing date or the case would be dismissed without further notice. Doc. 6. On March 10, 2023, the Debtor filed a motion to extend that deadline, stating that the Debtor needed additional time to compile documents and financial information, including the Debtor's tax returns. Doc. 11. That same day, the court granted the Debtor's request and ordered that required forms be filed by March 21, 2023. Doc. 13.

The Debtor filed his missing schedules (Doc. 16) and Chapter 13 plan (Doc. 17) on March 21, 2023. The Debtor's schedules reflect atypical assets and liabilities for a Chapter 13 debtor. The Debtor's scheduled assets totaled $1,663,608.45. Doc. 16. The Debtor owned his home, valued at $1,283,910, located at 4109 Maxwell Drive, Mason, Ohio 45040 (the "Property"). *Id.* In addition, the Debtor listed significant retirement holdings in the range of $300,000 to $400,000. *Id.* The Debtor's scheduled liabilities totaled $1,651,124.55, with $1,533,982.69 listed as secured debt. *Id.* Most of the secured debt related to the Property, including two mortgage loans held by Fifth Third Bank ("Fifth Third") totaling $987,000, an IRS lien, several State of Ohio tax liens, and a judgment lien. *Id.* The unsecured debt primarily consisted of IRS and State of Ohio taxes, a $42,000 domestic support obligation, medical bills, and credit card debt. *Id.* The LBR Form 2016-1(b) disclosure of compensation form (the "Disclosure Form"), included within the Debtor's schedules, specified that Dearfield intended to seek the current maximum no-look fee of $4,350. *Id.*

The proposed Chapter 13 plan provided for a 100% dividend to non-priority unsecured creditors and a monthly plan payment in the amount of $7,000. Doc. 17. Though the Debtor was listed as having a below median income and as unemployed, the Debtor identified $12,525 in monthly income. Docs. 16, 17. The plan was to be primarily funded from distributions from a rollover IRA, as well as commissions from a former employer and some family help. Doc. 16. Under the proposed plan, the Debtor would pay the Debtor's former spouse, creditor Lindsey Cole

("Cole"), an amount of $1,357 each month as part of an ongoing domestic support obligation. Doc. 17. A special plan provision indicated that the Debtor intended to sell the Property by September 2024 and expected the sale price would exceed $1.7 million, leaving over $1 million, along with the monthly plan payment of $7,000 to pay all claims in full. *Id.* However, following the meeting of creditors held on April 11, 2023, the first plan was denied confirmation by agreement with John G. Jansing, the Chapter 13 Trustee (the "Trustee"). Doc. 21.

Cole objected to the plan, claiming that the Debtor had not filed income tax returns for the past five years pursuant to 11 U.S.C. § 1325(a)(9).[3] Doc. 22. In addition, Cole asserted that the Debtor failed to disclose certain assets, including a Roth IRA in which Cole was entitled to receive approximately $46,570.50, pursuant to a qualified domestic relations order ("QDRO") entered in the divorce proceeding in the Domestic Relations Division of the Warren County Court of Common Pleas. *Id.* According to Cole, the Debtor also failed to disclose pending contempt proceedings stemming from the divorce proceeding and a bond posted by the Debtor in excess of $99,000 to stay the enforcement of his obligations during the Debtor's appeal of the divorce decree. *Id.* Cole's objection further averred that given the amount of the liens on the Property and the costs of a sale, the proposed plan would not result in a 100% dividend. *Id.* Fifth Third also objected to the plan, claiming that the proposed plan was underfunded, and that the sale of the Property was speculative. Doc. 25.

After receiving an extension, the Debtor filed an amended plan (Doc. 30) and amended schedules (Doc. 31) on May 23, 2023. The amended plan still provided for a 100% dividend and

[3] As detailed later in this decision, § 1325(a)(9), incorporating 11 U.S.C. § 1308, requires all tax returns to be filed for the taxable periods ending four years prior to the petition date if the tax return was required to be filed under the applicable tax law. 11 U.S.C. §§ 1308(b)(1) and 1325(a)(9). In addition, under the Mandatory Chapter 13 Form Plan in this district, the debtor is required to provide to the Trustee their federal tax return by "April 30 of each year, unless otherwise ordered by the Court." Mandatory Chapter 13 Form Plan, ¶ 8.1.

a monthly payment in the amount of $7,000. Doc. 30. In the amended plan, all secured payments were listed under section 5.2.1 as secured claims with no designated monthly payments, including both mortgage loans held by Fifth Third, an IRS tax lien, the supersedeas bond, and a State of Ohio tax lien. *Id.* The amended plan listed an arrearage in the amount of $45,490.01 owed to Cole for her interest in the QDRO as a domestic support obligation. *Id.* The Debtor also sought to avoid Union Savings Bank's judgment lien. *Id.* The special plan provision still provided for the sale of the Property, with no payments to the secured creditors until the sale closed. *Id.* Finally, the amended plan proposed that the supersedeas bond securing Cole's property rights would be released pursuant to a forthcoming agreed order. *Id.*

The Debtor's amended plan resulted in several objections, including another objection by Cole (Doc. 35), one by the Trustee (Doc. 37), and one by the IRS (Doc. 40). Fifth Third withdrew its objection. Doc. 39. In its objection, the IRS noted that the amended plan could not be confirmed as the Debtor failed to comply with the requirements of § 1308 pertaining to the filing of prepetition tax returns with the appropriate taxing authorities. Doc. 40. Both Cole's objection and the Trustee's objection also cited the reason for denying confirmation being the Debtor's failure to comply with § 1308. Docs. 35, 37. The Trustee further noted that the Disclosure Form did not match the amended plan, which provided that Dearfield would be opting out of the no-look fee and would be itemizing his fees instead. Doc. 37.

The Debtor, Cole, and the Trustee entered into an agreed order on July 5, 2023, ordering the release of the supersedeas bond to Cole. Doc. 41. However, the Debtor's case was ultimately dismissed, preconfirmation, on August 3, 2023. Doc. 47. The reason for the dismissal was the Debtor's failure to comply with § 1308 and the agreed order requiring the Debtor to file his

prepetition tax returns, namely the tax returns for tax years 2018 through 2022, by July 31, 2023. Doc. 45.

B. Case No. 23-31636

Two months later, the Debtor initiated a new case by filing a Chapter 13 petition on October 6, 2023. Doc. 1.[4] Again, the court notified the Debtor and Dearfield that the Debtor's filing was deficient and ordered that missing required forms be filed within 14 days of the petition filing date. Doc. 8. The Debtor filed his missing schedules (Doc. 12) and Chapter 13 plan (Doc. 13) on October 20, 2023. The Debtor's schedules substantially mirrored the amended schedules filed in the prior case. The Debtor's scheduled assets were reduced by $48,893.32, now totaling $1,668,216.84. Doc. 12. The Debtor still scheduled the Property, as well as most of his previously listed retirement holdings. *Id.* The Debtor's scheduled liabilities were reduced by $271,421.84, now totaling $1,383,192.72, with $1,147,222.69 listed as secured debt. *Id.* The Debtor's total amount of secured debt was reduced by $386,760, whereas his unsecured debts were increased by $115,338.16. *Id.* This time, the Disclosure Form specified that Dearfield accepted $7,000 as compensation for legal services. *Id.*

The Debtor's proposed Chapter 13 plan in this case still provided for a 100% dividend, despite reducing the monthly plan payment to $5,000. Doc. 13. Once again, the Debtor listed his income as below median; however, his monthly income was reduced to $8,425. Docs. 12, 13. In addition to the sources of income identified in the Debtor's schedules in the prior case, this proposed plan was also to be funded from income related to the Debtor's consulting business and some deferred compensation. Doc. 12. Under this plan, the Debtor intended to immediately list the Property for sale at $2 million. Doc. 13. Fifth Third objected to the plan on November 3, 2023.

[4] Docket references within this subsection refer to Case No. 23-31636.

Doc. 17. While Fifth Third did not object to the Debtor selling the Property, Fifth Third asserted that its claim must be fully paid from the proceeds of the sale, and that the sale must take place in a reasonable amount of time, both of which the Debtor's plan failed to address. *Id.*

On November 27, 2023, the Trustee filed a motion to dismiss, alleging that the Debtor failed to attend the meeting of creditors, which was scheduled for November 21, 2023, and failed to commence plan payments within 30 days, as required by 11 U.S.C. § 1326(a)(1). Doc. 21. The Debtor did not respond to the Trustee's motion, and his case was dismissed on December 27, 2023. Doc. 23.

C. Attorney Fee Applications

Following dismissal of Case No. 23-30280, Dearfield timely filed the itemized First Application for the work performed in the Debtor's first case. No. 23-30280, Doc. 49. The First Application sought $11,856, of which $2,352 was paid prepetition. *Id.* The First Application included a total of 45.9 hours expended, broken down as follows:

Attorney/Paralegal	Hourly Rate	Hours	Amount Billed
G. Timothy Dearfield (Attorney)	$300/hour	34.3 hours	$10,290.00
Julie Terry (Paralegal)	$135/hour	9.1 hours	$1,228.50
Elizabeth Thompson (Paralegal)	$135/hour	2.5 hours	$337.50
		45.9 hours	**$11,856.00**

The First Application does not seek reimbursement of expenses.

In review of the First Application, the court has grouped the services provided by Dearfield into the following categories, with the following sums of time and fees for each category:

Category Description	Time Spent	Billed Amount
General prepetition and preconfirmation legal services, including: - Preparation and review of skeletal petition (Entries 5 and 6) for 1.8 hours at $375; - Preparation and review of schedules and Chapter 13 plans (Entries 11-2, 21, 22, 34, 48, 49, 50, 51 and 52) for 12.9 hours at $3,210; - Telephone communication with the Debtor (Entries 1, 3, 24, and 63) for 0.8 hours at $190.50; - Text message communication with the Debtor (Entries 2, 10, 15, 17, 23, 33, 35, 36, 42, 44, 45, 62 and 66) for 2.4 hours for $588; - Meetings with the Debtor (Entries 8, 25, 28, and 53) for 5.5 hours at $1,650; - Analysis of child support arrears and auto and home insurance deficiencies (Entries 19 and 20) for 0.9 hours at $270; - Preparation for meeting of creditors and representing the Debtor at meeting (Entries 26 and 27) for 1.6 hours at $480; - Review of various docket entries, including continuations of confirmation hearings, objections, withdrawal of objections, and dismissal order (Entries 11-1, 29, 32, 43, 54, 55, 57, 59, 60, 61, 65, 68, 71, and 73) for 2.5 hours at $634.50; - Review of Cole's objection and communication regarding 2004 Examination (Entries 30, 31, and 40) for 0.6 hours for $180; - Communication with Trustee regarding various objection, continuation of confirmation hearing, and dismissal for failure to file tax returns (Entries 37, 64, 69, and 72) for 0.5 hours for $150; - Communication regarding, preparation of, and review of agreed order to extend time to file amended plan and information required for amended plan (Entries 38, 39, and 41) for 0.4 hours for $87; - Communication regarding and preparation/review of agreed order releasing supersedeas bond (Entries 56, 58, and 67) for 0.7 hours for $144; and - Written communication to Debtor (i.e., preparation of a letter directed to the Debtor) (Entry 70) for 0.2 hours for $27.	**30.8 hours**	**$7,986.00**

Research and work related to foreclosure action, IRS lien, and Debtor's potential beneficial interest in Indiana trust, including: - Research, review, and communication regarding a foreclosure suit filed by Fifth Third against the Debtor on the Property (Entries 4, 7, and 9) for 2.6 hours for $565.50; - Research related to the Union Savings Bank judgment lien and review of potential lien avoidance (Entries 12, 16, and 18) for 4.3 hours for $1,207.50; - Research related to the IRS lien (Entries 13 and 14) for 2.7 hours for $447; - Research regarding a property in Lake County, IN and estate planning for the Debtor's parents (Entry 46) for 3.5 hours for $1,050; and - Research regarding caselaw on principle of constructive trust applicable to property division awards (Entry 47) for 2.0 hours for $600.	**15.1 hours**	**$3,870.00**
	45.9 hours	**$11,856.00**

Although no response was filed, the court scheduled a hearing for November 16, 2023 on the First Application to determine whether the fees sought by Dearfield should be allowed under 11 U.S.C. § 330 given that the requested fees appeared unusually high in a case dismissed preconfirmation and without the Debtor having filed the prepetition tax returns required by § 1308. No. 23-30280, Doc. 50. The hearing was subsequently continued to December 21, 2023. On December 18, 2023, Dearfield amended the First Application, reducing his requested attorney fees by $2,352, for a total of $9,399. No. 23-30280, Doc. 55. In amending the First Application, Dearfield reduced the time for ten itemizations included in the time analysis attached to the First Application. Using the categories of services identified by the court above, the amended First Application is summarized below:

Category Description	Time Spent	Billed Amount
General prepetition and preconfirmation legal services, including: - Preparation and review of skeletal petition (Entries 5 and 6) for 1.8 hours at $375; - Preparation and review of schedules and Chapter 13 plans (Entries 11-2, 21, 22, 34, 48, 49, 50, 51 and 52) for 10.5 hours at $2,490; - Telephone communication with the Debtor (Entries 1, 3, and 24) for 0.7 hours at $160.50; - Text message communication with the Debtor (Entries 2, 10, 15, 17, 23, 33, 35, 36, 42, 44, 45, 62 and 66) for 2.4 hours for $588; - Meetings with the Debtor (Entries 8, 25, 28, and 53) for 4.5 hours at $1,350; - Analysis of child support arrears and auto and home insurance deficiencies (Entries 19 and 20) for 0.9 hours at $270; - Preparation for meeting of creditors and representing the Debtor at meeting (Entries 26 and 27) for 1.6 hours at $480; - Review of various docket entries, including continuations of confirmation hearings, objections, withdrawal of objections, and dismissal order (Entries 11-1, 29, 32, 43, 54, 55, 57, 59, 60, 61, 68, and 71) for 2.3 hours at $607.50; - Review of Cole's objection and communication with counsel for Cole regarding 2004 Examination (Entries 30, 31, and 40) for 0.6 hours at $180; - Communication with Trustee regarding various objection, continuation of confirmation hearing, and dismissal for failure to file tax returns (Entries 37, 64, 69, and 72) for 0.5 hours at $150; - Communication regarding, preparation of, and review of agreed order to extend time to file amended plan and information required for amended plan (Entries 38, 39, and 41) for 0.4 hours at $87; - Communication with counsel for Cole and preparation/review of agreed order releasing supersedeas bond (Entries 56, 58, and 67) for 0.7 hours at $144; and - Written communication to Debtor (i.e., preparation of a letter directed to the Debtor) (Entry 70) for 0.2 hours for $27.	**27.1 hours**	**$6,909.00**

Research and work related to foreclosure action, IRS lien, and Debtor's potential beneficial interest in Indiana trust, including: - Research, review, and communication regarding a foreclosure suit filed by Fifth Third against the Debtor on the Property (Entries 4 and 9) for 1.3 hours at $175.50; and - Research related to the Union Savings Bank judgment lien and review of potential lien avoidance (Entries 12, 16, and 18) for 2.0 hours at $517.50; - Research related to the IRS lien (Entries 13 and 14) for 2.7 hours at $447; - Research regarding a property in Lake County, IN and estate planning for the Debtor's parents (Entry 46) for 3.5 hours at $1,050; and - Research regarding caselaw on principle of constructive trust applicable to property division awards (Entry 47) for 1.0 hour at $300.	**10.5 hours**	**$2,490.00**
	37.6 hours	**$9,399.00**

Upon receipt of the amended First Application, the court scheduled a telephonic status conference with Dearfield and the Trustee for December 19, 2023. At the status conference, the court noted that the Trustee filed a motion to dismiss the Debtor's second case, No. 23-31636, and that pending the outcome of that motion, the court inquired whether a fee application for the second case would follow. Dearfield indicated that he intended to file a fee application in the Debtor's second case. In response to an inquiry by the court, Dearfield informed the court that he was not yet in receipt of the Debtor's missing tax returns at issue in Case No. 23-30280. With no objection by either Dearfield or the Trustee, the court adjourned the hearing that was scheduled for December 21, 2023 on the First Application until a fee application was filed in Case No. 23-31636.

Following the dismissal of Case No. 23-31636, Dearfield timely filed the itemized Second Application for the work performed in the Debtor's second case. No. 23-31363, Doc. 27. The Second Application sought $3,687, all paid prepetition. *Id.* The Second Application includes a total of 17.3 hours expended, summarized as follows:

Attorney/Paralegal	Hourly Rate	Hours	Amount Billed
G. Timothy Dearfield (Attorney)	$300/hour	9 hours	$2,700.00
Julie Terry (Paralegal)	$135/hour	5.8 hours	$783.00
Elizabeth Thompson (Paralegal)	$135/hour	2.5 hours	$337.50
		17.3 hours	**$3,820.50**[5]

The Second Application does not seek reimbursement of expenses.

Like its review of the First Application, the court has grouped the services provided by Dearfield identified in the Second Application into the following categories, with the following sums of time and fees for each category:

Category Description	Time Spent	Billed Amount
General prepetition and preconfirmation legal services, including: - Preparation and review of skeletal petition, schedules, and Chapter 13 plan (Entries 15, 16, and 20) for 4.5 hours at $690; - Text message/email communication with the Debtor (Entries 2, 3, 8, 9, 11, and 12) for 1.1 hours for $264; - Communication regarding the foreclosure suit filed by Fifth Third (Entry 10) for 0.1 hours at $30; - Telephone communication with the Debtor (Entries 6, 7, 21, 35, and 38) for 1.1 hours at $313.50; - Analysis of judicial report with liens and IRS claims filed in Case No. 23-30280 (Entry 14) for 1.4 hours at $420; - Meeting with the Debtor (Entry 22) for 1.5 hours at $450; - Preparation and review of forms (Entries 27, 28, 32, and 33) for 0.6 hours at $114; - Preparation for meeting of Creditors and representing the Debtor at meeting (Entries 34 & 36) for 1.6 hours at $480;	**13.8 hours**	**$3,183.00**

[5] The Second Application expressly seeks reimbursement in the amount of $3,687; however, the time analysis attached to the Second Application identifies services rendered totaling $3,820.50. The amount of $3,820.50 does not include the itemizations marked as "NC."

- Written communication to Debtor regarding Trustee's motion to dismiss (Entry 39) for 0.1 hours at $13.50; and - Review of various docket entries, including notices of appearance, notice of meeting of Creditors, objections, notice of deficient filings, Trustee's motion to dismiss, dismissal order, and Trustee's certification of final payment (Entries 17, 19, 24, 25, 26, 37, 41, & 42) for 1.8 hours at $408.		
Fee application: - Preparation and review of fee application (Entries 44 and 45) for 3.5 hours at $637.50.	**3.5 hours**	**$637.50**
	17.3 hours	**$3,820.50**

Upon receipt of the Second Application, the court scheduled and held a hearing on both of the Applications on March 7, 2024. No. 23-30280, Doc. 58; No. 23-31636, Doc. 28.

III. Positions of the Parties

Pursuant to the scheduling orders (No. 23-30280, Docs. 50, 58; No. 23-31636, Doc. 28), the court required Dearfield and the Trustee to file memoranda addressing the following issues:

(i) Whether Dearfield is entitled to any fees in excess of the $4,350 set forth in the LBR Form 2016-1(b) disclosure of compensation (No. 23-30280, Doc. 16 at 39-40) in Case No. 23-30280, particularly when the Debtor's plan was never confirmed;

(ii) Whether there is a basis to allow attorney fees for any time period beyond the date of the 341 meeting of creditors when the meeting was not held open pursuant to 11 U.S.C. § 1308(b)(1);

(iii) Whether the decision in *In re Village Apothecary*, 45 F. 4th 940 (6th Cir. 2022), applies to or has relevance in a court's determination of a debtor's counsel's fee application in a Chapter 13 case;

(iv) Other considerations under *In re Boddy*, 950 F.2d 334 (6th Cir. 1991) and 11 U.S.C. § 330 the court should consider in determining the reasonableness of the Applications;

(v) Whether there is a basis to allow some or all of the attorney fees in Case No. 23-31636 when Case No. 23-30280 was dismissed prior to confirmation for failure to file certain tax returns required by § 1308, as well as factors the court should consider in determining whether Dearfield conducted a reasonable inquiry into the

Debtor's financial affairs, including the status of the tax return filings, prior to filing the petition in Case No. 23-31636;

(vi) Whether the absence of the Debtor's tax returns in Case No. 23-30280 directly impacted the dismissal of Case No. 23-31636 and any effect that may have on Dearfield's Second Application; and

(vii) How the court should weigh the Debtor's own responsibility in failing to attend the meeting of creditors and failing to commence payments to the Trustee in Case No. 23-31636.

See No. 23-30280, Docs. 50, 58; No. 23-31636, Doc. 28.

A. Trustee's Position

The Trustee notes that the Disclosure Form filed in Case No. 23-30280 specifically indicated that Dearfield intended to seek the maximum no-look fee of $4,350 and that Dearfield's First Application lacked any reference to opting out of the no-look fee. No. 23-30280, Doc. 52, ¶ 1. The Trustee explains that the only reference to itemizing fees under LBR 2016-1(b)(2)(C) can be found in paragraph 5.1.7 of the Debtor's unconfirmed amended plan (No. 23-30280, Doc. 30), in which Dearfield indicates his intent to opt out of the no-look fee and file an itemized fee application, estimating total fees in the amount of $10,000. *Id.* The Trustee claims that the provision of paragraph 5.1.7 is unclear, as the provision also provides that the total amount of fees to be disbursed by the Trustee was $1,998, with monthly payments of $2,000. *Id.* Notwithstanding these points, the Trustee asserts that the Court has discretion pursuant to LBR 2016-1(b)(5)(A) to award fees following a preconfirmation dismissal. *Id.*

The Trustee reiterates that Case No. 23-30280 was dismissed for the Debtor's failure to comply with the court order (Doc. 45) to provide the Trustee with the Debtor's tax returns for tax years 2018 through 2022 by July 31, 2023. Doc. 52, ¶ 2. The Trustee appears to suggest a basis for attorney fees exists, as the July 31, 2023 deadline falls within 120 days of the meeting of

creditors held on April 11, 2023, as set forth in 11 U.S.C. § 1308. *Id.* The Trustee further states that the IRS and the Debtor consented to the July 31, 2023 deadline. *Id.*

The Trustee argues that *Village Apothecary* applies to the Debtor's cases and that the court may consider the results obtained in a Chapter 13 case when determining the reasonableness of fees under 11 U.S.C. § 330(a)(3). No. 23-30280, Doc. 52, ¶ 3. In reviewing the First Application, the Trustee suggests that the requested fees are unreasonable, and that "certain fees charged seem excessive and should have been discounted and/or eliminated." *Id.* at ¶ 4. The Trustee points to several line items in the First Application, stating that some of these fees "appear to simply be attorney due diligence." *Id.* The Trustee also challenges the fees charged for various text messages and notices as excessive. *Id.*

As to the court's inquiry regarding whether Dearfield conducted a reasonable inquiry into the Debtor's financial affairs before commencing Case No. 23-31636, the Trustee states that the filing of the Debtor's second case was not prohibited by the Bankruptcy Code, despite contending that "best practices would dictate that a Debtor have all tax returns filed prior to the filing of the bankruptcy case." No. 23-30280, Doc. 60, ¶ 1. The Trustee conveys that the Debtor was facing an imminent sheriff's sale at the time of filing and that Dearfield "apparently had an assurance from Debtor that the tax returns were being prepared," noting that Dearfield "ha[d] a duty to zealously represent the interests of his client, sophisticated or not, and it appears that [Dearfield] did that throughout both bankruptcy proceedings." *Id.* The Trustee claims that the dismissal of Case No. 23-30280 for the Debtor's failure to file tax returns had no impact on the dismissal of Case No. 23-31636. *Id.* at ¶ 2. Finally, with respect to how the court should weigh the Debtor's failure to attend the meeting of creditors and failure to commence payments to the Trustee in awarding any

fees, the Trustee asserts that Dearfield "can only represent his client to the point of Debtor's compliance." *Id.* at ¶ 3.

B. Debtor Counsel's Position

Dearfield alleges multiple case complications, such as the foreclosure action in Warren County, IRS tax liens exceeding $2 million, child support arrears, the contempt proceedings in the Warren County Court of Common Pleas, the supersedeas bond, QDRO compliance, insurance deficiencies, the Debtor's requirement to file four years of prepetition tax returns, various objections to confirmation, budget issues due to the Debtor's lack of income, and issues regarding the Debtor's closely held business and its lack of revenue. No. 23-30280, Doc. 53 at 1.

Regarding the court's concern in allowing compensation in excess of the amount included the Disclosure Form filed in Case No. 23-30280, Dearfield provided a list of cases in this district and orders filed in those cases approving fees in excess of the amount specified on the respective LBR Form 2016-1(b) disclosures of compensation.[6] No. 23-30280, Doc. 61. Dearfield notes that LBR 2016-1 allows for attorneys to file an itemized fee application within 60 days post-confirmation, and claims that application will almost always differ from LBR Form 2016-1(b). No. 23-30280, Doc. 53, ¶ 10; Doc. 61, ¶ 5. According to Dearfield, a Chapter 13 plan provision which indicates that counsel intends to opt out of the no-look fee is "a way to apprise parties of the impact attorney fee[s] will have on a plan." Doc. 53, ¶ 12; Doc. 61, ¶ 7.

Dearfield also agreed with the Trustee that the agreed order (No. 23-30280, Doc. 45) gave the Debtor the ability to file his tax returns on or before July 31, 2023. No. 23-30280, Doc. 61 at

[6] See *In re Anderson*, No. 12-32625, Docs. 26, 87 (Bankr. S.D. Ohio Mar. 6, 2013) (Walter, J.) (disclosing compensation of $3,500; allowing fees of $29,900); *In re Howell*, No. 15-14095, Docs. 12, 106 (Bankr. S.D. Ohio May 8, 2017) (Hopkins, J.) (disclosing compensation of $3,500; allowing fees of $6,880.50); *In re Cogan*, No. 15-12733, Docs. 10, 210 (Bankr. S.D. Ohio Nov. 1, 2016) (Buchanan, J.) (disclosing compensation of $3,500; allowing fees of $19,690); *In re Farrar*, No. 16-57609, Docs. 21, 71 (Bankr. S.D. Ohio Nov. 7, 2017) (Hoffman, J.) (disclosing compensation of $15,000; allowing fees of $26,647.50); *In re Harper*, No. 21-50709, Docs. 16, 73 (Bankr. S.D. Ohio Nov. 7, 2017) (Nami Khorrami, J.) (disclosing compensation of $4,350; allowing fees of $7,183).

3, ¶ 10. Dearfield argues that although § 1308 mandates the filing of a debtor's tax returns the day before the meeting of creditors is to be held, a debtor's case is not automatically dismissed for failure to comply with the filing of the tax returns. *Id.* Instead, Dearfield suggests that under § 1325(a)(9), a debtor may file those required tax returns prior to confirmation of the plan. *Id.*

Dearfield argues that *Village Apothecary*, in which the United States Court of Appeals for the Sixth Circuit affirmed the bankruptcy court's reduction of attorney fees for the Chapter 7 trustee's special counsel on account of the results obtained, "does not mandate a holding in a Chapter 13 case." No. 23-30280, Doc. 61 at 3-4, ¶ 11. According to Dearfield, there is a distinction between the Debtor's cases and *Village Apothecary*, as *Village Apothecary* involved a Chapter 7 proceeding, in which "the 'results obtained for the benefit of the estate' is determinative." *Id.* Dearfield argues that in a Chapter 13 case the court can and should consider not only the benefit to the bankruptcy estate, but also the benefit to the Debtor individually. *Id.* Dearfield explains that the filing of both of the Debtor's cases benefitted the Debtor and his bankruptcy estate by allowing the Debtor to remain in possession of the Property, preserving the equity in the Property, and allowing for the potential private sale of the Property for the benefit of the creditors. *Id.*

Finally, Dearfield explained the reasoning behind the decision to file the second case, No. 23-31636: (i) there was an urgency in stopping the foreclosure sale of the Property, coupled with the Debtor's intent to sell the Property shortly after the filing; (ii) Dearfield and the Debtor engaged in discussions regarding whether to file a Chapter 7 proceeding as § 1308 does not apply; (iii) the Debtor convinced Dearfield that the four years of missing tax returns would be filed "within days" of filing the Chapter 13 petition; and (iv) the Debtor was eligible to file a second Chapter 13 case. *Id.* at 4, ¶ 1. In Case No. 23-30280 and following discussions with the Trustee regarding dismissal due to the Debtor's failure to comply with the filing of his tax returns, Dearfield contacted the

Debtor "numerous times without success." *Id.* at ¶ 2. Yet, Dearfield believed that the Debtor would comply, as the Debtor was apparently able to successfully cancel a prior $2 million IRS tax lien. *Id.* Dearfield contends that the Debtor is responsible for the dismissal of Case No. 23-31636, in that the Debtor was aware of the date of the meeting of creditors and elected to travel that day instead of appearing for the hearing. *Id.* at ¶ 3. Dearfield also explains that the Debtor made payments in Case No. 23-30280 pursuant to the proposed plan, evidencing the Debtor's knowledge that such payments would be required in Case No. 23-31636. *Id.*

IV. Hearing

The court conducted a hearing on March 7, 2024 on the Applications, participated in by Dearfield, Scott G. Stout, counsel for the Chapter 13 Trustee, and the Trustee. Although no party presented sworn testimony in support of the Applications, Dearfield provided his statements as counsel in support of and explaining the representation which he and his firm provided to the Debtor and for which the fees are sought. As an officer of the court, the court accepted Dearfield's statements in lieu of sworn testimony.

During the hearing, Dearfield defended the Applications and the request for $13,086 in attorney fees. According to Dearfield, although the direct outcomes of both cases were preconfirmation dismissals, the filing of both cases temporarily stayed the foreclosure proceedings on the Property, with an estimated value between $1.5 to $2 million. Dearfield identified issues with the Union Savings Bank judgment lien, which ranged from $400,000 to $800,000, in which he and the Debtor believed a deficiency amount related to that lien had been miscalculated. Dearfield argued that these stays conferred a substantial benefit upon the Debtor by preserving the equity in the Property. Dearfield also highlighted the Debtor's complex personal circumstances, including a challenging divorce and custody battle, ongoing contempt proceedings arising from the divorce, and a significant cash bond exceeding $99,000 tied to the Debtor's appeal of the

divorce decree. Additionally, Dearfield explored the Debtor's potential beneficiary interest in a revocable living Indiana trust established by the Debtor's parents.

Regarding Dearfield's reasonable inquiries into the Debtor's financial affairs, particularly as related to the Debtor's obligation to file his tax returns, Dearfield highlighted the Debtor's prior success in the cancellation of a substantial $2 million tax lien, which, according to Dearfield, justified his reliance on the Debtor's assurances of compliance with the required tax filings. Based on these assurances, Dearfield argued that his continued faith in the Debtor's promises was reasonable, even as these expectations were ultimately unmet. Furthermore, considerable time was spent advising the Debtor on the strategic choice of bankruptcy chapters, which Dearfield argued reflects a significant investment in achieving the best possible outcome for the Debtor.

V. Legal Analysis

Before the court is a matter that requires an examination of the pertinent legal framework prior to its application to the Debtor's cases. Central to the court's deliberations is its responsibility to independently review debtor counsel's fee applications submitted in Chapter 13 cases. This review encompasses a detailed analysis of the mandates set forth in 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2016, including consideration of Debtor's counsel's obligations to adhere to these statutory requirements. The court will examine § 330(a)(1) and the mandatory guidelines established in *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991).

The court will also explore *In re Village Apothecary, Inc.*, 45 F.4th 940 (6th Cir. 2022) and its applicability to Chapter 13 proceedings, particularly in terms of its focus on the outcomes achieved for the bankruptcy estate. The court will endeavor to harmonize *Village Apothecary* with the provisions of § 330(a)(4)(B), which permits attorney fees in Chapter 13 cases for services which confer advantage to the individual debtor as opposed to the bankruptcy estate.

Finally, the court will evaluate compliance with § 1308, which governs the Debtor's duty to timely file certain prepetition tax returns, as it relates to the fees sought by Dearfield through the Applications. In doing so, the court will review the Trustee's limited authority to postpone the deadline for filing such returns and the requirements for extending that deadline.

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

In order to guard the public interest and integrity of the of the bankruptcy system, bankruptcy courts have an independent duty to monitor and determine the reasonableness of attorney fees related to bankruptcy cases, regardless of whether any party objects to the fee application or whether the debtor supports the fee application. *In re Henson*, 637 B.R. 13, 15 (Bankr. S.D. Ohio 2022) (citing *In re Spear*, 636 B.R. 765, 769 (Bankr. S.D. Ohio 2022) (internal citations omitted)); see also *Dery v. Cumberland Cas. & Sur. Co.* (*In re 5900 Assocs.*), 468 F.3d 326, 329-30 (6th Cir. 2006) (citation omitted) ("In a bankruptcy case fees are not a matter for private agreement. There is an inherent public interest that must be considered in awarding fees.").

B. Legal Overview of Attorney Fee Applications in Chapter 13 Cases

Regarding attorney compensation, § 330(a)(1) of the Bankruptcy Code provides that a bankruptcy court may award "reasonable compensation for actual, necessary services rendered by the . . . attorney and by any paraprofessional person" employed under § 327 or § 1103. 11 U.S.C. § 330(a)(1)(A). "The court may, on its own motion . . . award compensation that is less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2). "The burden of proof on all issues under 11 U.S.C. § 329 is on the attorney and it is the attorney's burden to come forward with the appropriate proof, such as the fee schedule, to establish that the fee is reasonable." *Thomas v. Robinson* (*In re Robinson*), 189 F. App'x 371, 374 (6th Cir. 2006) (citing *In re Geraci*, 138 F.3d 314, 318 (7th Cir. 1998)).

In Chapter 13 cases, courts determine the reasonableness of attorney fees under § 330 using the lodestar method, which is calculated by multiplying the number of hours reasonably expended on a matter by a reasonable attorney rate, while also considering the attorney's experience level and comparable rates in the local market. *Henson*, 637 B.R. at 15 (citing *Spear*, 636 B.R. at 772-73; *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991) ("The Supreme Court has made it clear that the lodestar method of fee calculation is the method by which federal courts should determine reasonable attorney's fees under federal statutes which provide for such fees.")). "Other factors may and should also be considered and may warrant an increase or a decrease in the fees awarded." *Spear*, 636 B.R. at 770 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). These factors, referred to as the *Johnson* factors, from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), include:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.[7]

[7] The 1994 amendments to the Bankruptcy Code incorporated the *Johnson* factors into § 330(a)(3), which provides:

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (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, a case under this title;
>
> (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).

In re Village Apothecary, Inc., 45 F.4th 940, 947 (6th Cir. 2022) (quoting *Haman v. Levin* (*In re Robertson*, 772 F.2d 1150, 1152 n. 1 (4th Cir. 1985)); see also *Spear*, 636 B.R. at 770-71 (collecting cases). In addition, except as otherwise allowed, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

At all times pertinent to these cases, the Bankruptcy Court for the Southern District of Ohio has allowed a maximum no-look fee in the amount of $4,350, which is presumed to be reasonable for most services provided to a debtor in a Chapter 13 case. LBR 2016-1(b)(2)(A). See *In re Spurlock*, 642 B.R. 269 (Bankr. S.D. Ohio 2022).[8] Local Bankruptcy Rule 2016-1(b)(2)(A) specifies the types of services generally provided in exchange for the no-look fee. *Id.* Attorneys can choose between itemizing their time or seeking the no-look fee. In the event an attorney chooses to itemize, the attorney must file an itemized fee application within 60 days after the confirmation order is entered. See LBR 2016-1(b)(2)(C). However, because both of the Debtor's cases were dismissed prior to confirmation, the no-look fee does not apply, and counsel needed to file an itemized fee application to support the fees requested. See LBR 2016-1(b)(5)(A). As such, the court will review the itemized Applications and determine the reasonableness of attorney fees under § 330 and *Boddy* using the lodestar method.

C. Compliance with Requirements of 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2016

As an initial matter, the court must consider whether Dearfield is entitled to any fees in excess of the amounts set forth in Disclosure Forms. Under § 329(a), "[a]ny attorney representing

[8] The no-look fee has been increased a number of times over the years. Effective February 24, 2021, the no-look fee was increased by the court to $4,350. General Order 50-1.

a debtor in a case under [Title 11], or in connection with such a case . . . shall file with the court a statement of the compensation paid or agreed to be paid . . . for services rendered or to be rendered in contemplation of or in connection with the case by such attorney[.]" 11 U.S.C. § 329(a). The court is authorized to review fees received by a debtor's attorney and to assess the reasonable value of services provided by the attorney. If the court determines the compensation received exceeds the reasonable value of services rendered, it may cancel the fee agreement or order a return of the amount that is excessive. 11 U.S.C. § 329(b).

Section 329 is implemented through Bankruptcy Rules 2016(b) and 2017. Rule 2016(b) provides: "Every attorney for a debtor . . . shall file and transmit to the United States trustee . . . the statement required by § 329 of the Code . . . . A supplemental statement shall be filed . . . within 14 days after any payment or agreement not previously disclosed." Fed. R. Bankr. P. 2016(b). Under Rule 2017, the bankruptcy court may determine, after notice and a hearing, that any portion of an attorney's fee for work in a bankruptcy case is excessive. See Fed. R. Bankr. P. 2017.

"Section 329 and Rule 2016 are fundamentally rooted in the fiduciary relationship between attorneys and the courts. Thus, the fulfillment of the duties imposed under these provisions are crucial to the administration and disposition of proceedings before the bankruptcy courts." *Mapother & Mapother, P.S.C. v. Cooper* (*In re Downs*), 103 F.3d 472, 480 (6th Cir. 1996) (denying all compensation to an attorney who disregarded his obligation to disclose his fee arrangement under § 329 and Rule 2016). "The provisions of the Bankruptcy Code and the Bankruptcy Rules that regulate attorney fees are designed to protect both creditors and the debtor against overreaching attorneys." *Henderson v. Kisseberth* (*In re Kisseberth*), 273 F.3d 714, 721 (6th Cir. 2001) (citing *In re Walters*, 868 F.2d 665, 668 (4th Cir. 1989)). "To ensure such protection, bankruptcy courts have broad and inherent authority to deny any and all compensation

where an attorney fails to satisfy the requirements of the Code and Rules." *Id.* (citing *Downs*, 103 F.3d at 479; *Arnes v. Boughton* (*In re Prudhomme*), 43 F.3d 1000, 1003 (5th Cir. 1995) ("concluding that a bankruptcy court may order disgorgement as a sanction against the debtor's counsel for failing to disclose fees")).

Courts, both within and beyond the Sixth Circuit, have strictly construed the provisions of § 329 and Rule 2016. In *In re Hyland*, No. 13-32971, 2014 Bankr. LEXIS 368, 2014 WL 269883 (Bankr. E.D. Tenn. Jan. 23, 2014), the court denied a Chapter 13 debtor's counsel's fee application in the amount of $6,855, as the request exceeded the amount specified in the compensation disclosure statement pursuant to § 329 and Rule 2016(b). Counsel had filed its compensation disclosure statement in compliance with both § 329 and Rule 2016, which provided that attorney fees were limited to $3000, less a $1,500 retainer. *Id.* at *4, 2014 WL 269883, at *2. In addition, the proposed Chapter 13 plan provided that counsel's fees shall be paid in the amount of $3000, less $1,500, previously paid by the debtor. *Id.* at *5-6, 2014 WL 269883, at *2. The case involved extensive litigation, and ultimately, the debtor's case was dismissed preconfirmation after the debtor accrued a $2,500 plan arrearage. *Id.* at *3, 2014 WL 269883, at *1.

In the preconfirmation dismissal order, the court awarded counsel $1,250, allowing counsel to file a fee application within ten days. *Id.* at *3-4, 2014 WL 269883, at *1. Shortly thereafter, counsel filed an itemized fee application requesting $6,855. *Id.* at *4, 2014 WL 269883, at *1. In its brief memorandum order, the court simply held counsel could not switch to a different fee arrangement with the debtor. *Id.* at *6, 2014 WL 269883, at *2. The court found counsel's request to be troubling and contrary to the previously filed compensation disclosure statement, holding that counsel "cannot have it both ways" and that the maximum fee to which counsel was entitled was $3000. *Id.* at *6-7, 2014 WL 269883, at *2.

In *In re Ball*, No. 07-32628-H4-13, 2011 Bankr. LEXIS 4680, 2011 WL 7748356 (Bankr. S.D. Tex. Sept. 24, 2011), the court determined that a Chapter 13 debtor's counsel was only entitled to half of the fees and reimbursable expenses requested in his fee application, as counsel repeatedly filed delinquent disclosures of compensation in both that case and other Chapter 13 cases before the court. In that case, counsel filed a fee application seeking approval for a total amount of $2,208.56. *Id.* at *2, 2011 WL 7748356, at *1. In construing § 329 and Rule 2016, the court reasoned that "[b]ankruptcy jurisprudence consistently emphasizes the importance of strict compliance with these requirements." *Id.* at *3-4, 2011 WL 7748356, at *1 (citing *In re Campbell*, 259 B.R. 615, 626-27 (Bankr. N.D. Ohio 2001) ("Compliance with § 329 and Rule 2016 is crucial to the administration and disposition of cases before the bankruptcy courts. Compliance is mandatory.") (cleaned up)). Ultimately, the court determined that despite his delinquent behavior, counsel did provide services benefitting the estate and allowed counsel to collect $1,200 in fees. *Id.* at *7, 2011 WL 7748356, at *2.

While the *Hyland* and *Ball* decisions provide apparent precedent for denial of the requested fees in Dearfield's First Application in the absence of a supplemental Disclosure Form, the court also considers the decision in *In re Becker*, 469 B.R. 121 (Bankr. M.D. Fla. 2012), in which that court ultimately granted debtor's counsel's request for compensation, despite his failure to adhere to the mandated disclosure requirements. In *Becker*, counsel sought attorney fees in the amount of $9,900. *Id.* at 125. When the debtor filed his Chapter 13 petition, counsel agreed to charge the debtor $3,500 for his legal work, $1,750 of which was paid prepetition. *Id.* The order confirming the debtor's second amended plan approved attorney fees in the amount of $4,750, which included the agreed $3,500 previously mentioned and $1,250 for "post-petition monitoring services." *Id.*

Eventually, the debtor was unable to make his mortgage payments after confirmation and was required to modify his plan several times. *Id.* at 125-26. With each modified plan, counsel increased his fees up to $9,781, and the Chapter 13 trustee continued to consent to the confirmation of the modified plans. *Id.* However, counsel only filed one additional disclosure of compensation for $1,720. *Id.* at 126. Although the trustee initially consented to the debtor's fifth modified plan (which decreased the attorney fees to $9,468), the trustee subsequently objected to the amount of attorney fees, arguing that counsel was only entitled to attorney fees of $6,470, which equaled the amount of fees disclosed. *Id.* While the trustee's objection to attorney fees was pending, the fifth modified plan was confirmed, which allowed attorney fees of $9,468. *Id.*

Counsel responded to the trustees concerns by filing a fee application requesting attorney fees of $9,900, as well as a supplemental disclosure of compensation for an additional $3,950, arguing that "the additional fees were incurred in connection with modifying the debtor's mortgage and then modifying the debtor's Chapter 13 plan five times." *Id.* at 126-27. The court found the requested fees to be unreasonable, as counsel already "received an additional $1,250 monitoring fee to assist the debtor in the event of a default or upon a change of circumstances, which, not unexpected, the debtor encountered in this case." *Id.* at 127. While counsel did disclose additional compensation of $1,720, the amended confirmation order allowed attorney fees in the amount of $9,740, exceeding the maximum no-look fee by almost $5,000. *Id.* Although the court agreed that some additional fees were allowable and partially allowed counsel's fee application in the amount of $9,740, including the $1,750 received prepetition, this decision was not rendered without a measure of judicial discontent, noting that the court would not disallow fees previously approved, even though counsel should have filed both a fee application and a supplemental disclosure of compensation. *Id.* at 127.

The court in *Becker* admonished the Chapter 13 trustee for its late objection, suggesting that "[i]f an objection had been timely filed, the Court likely would have allowed some fees over the 'no look' threshold, but not the entire amount requested." *Id.* In reluctantly approving the fee award, the court also ordered that "prior to submitting a confirmation order, initial or amended, the trustee should verify debtor's counsel has filed a timely disclosure of compensation covering all fees and costs requested," adding that the trustee should object if no disclosure is filed. *Id.* at 128. The *Becker* decision highlights the need for trustee vigilance when examining attorney fees, concluding that:

> this case illustrates the need to monitor our local 'no look' fee provisions in Chapter 13 cases. Debtor's counsel 'ran up the tab' without timely filing needed disclosures or fee applications. The trustee did not file timely objections at an early stage. In the future, attorneys need to know the rules, the trustee needs to bring exceptions and infractions to light, and the Court needs to [ensure] that all attorneys follow the rules.

Id.

Recently, another court faced similar issues when deciding whether to allow fees in excess of the amounts disclosed pursuant to § 329 and Rule 2016. See *In re Harrington*, No. 2:19-bk-61081-BPH, 2024 Bankr. LEXIS 1341, 2024 WL 2890080 (Bankr. D. Mont. June 7, 2024). In *Harrington*, debtors' counsel filed a second fee application seeking fees in the amount of $6,704.26 and costs in the amount of $119.97, in addition to the previously approved fees and costs of $14,250. *Id.* at *1-2, 2024 WL 2890080 at *1. If counsel's application were approved, counsel would have received a total amount of $21,074.23 in fees and costs. *Id.* at *2, 2024 WL 2890080 at *1. Part of that court's decision included an examination of counsel's duty to disclose pursuant to § 329 and Rule 2016, as counsel had failed to file an amended disclosure. *Id.* at *21, 2024 WL 2890080 at *8. As in *Becker*, counsel's fee application was unopposed, despite counsel's failure to comply with § 329 and Rule 2016. *Id.* However, the court declined to impose a "harsh penalty"

by denying counsel's request based on that nondisclosure. *Id.* Nevertheless, the court cautioned counsel that "future applications will be scrutinized, and penalties imposed for failing to comply." *Id.* at *21-22, 2024 WL 2890080 at *8. The court ultimately denied counsel's request, given that the case lacked complex issues justifying an award three times the court's no-look fee of $6,000. *Id.* at *24, 2024 WL 2890080 at *8 ("Fees that exceed the presumptively reasonable 'no look' fee of $6,000 by a multiple of two or three must involve issues not ordinarily encountered in a 'routine' chapter 13 case.").

The caselaw regarding the court's authority to disallow fees in excess of the amounts identified in a disclosure of compensation pursuant to § 329 and Rule 2016 is clear. As previously mentioned, Dearfield has brought to the court's attention several cases within this district in which fees surpassing the initially disclosed amounts were allowed by other judges. In consideration of these prior orders, the court is not inclined to disallow the requested fees in the First Application for Dearfield's failure to file a supplemental Disclosure Form. This approach aligns with the principles of fairness and consistency in this District. However, the court would be remiss in not taking the opportunity to emphasize the importance of transparency in bankruptcy proceedings through the filing of supplemental disclosures of compensation, as underscored by the *Becker* and *Harrington* decisions.

To this end, the court stresses the need for strict compliance with the disclosure requirements under § 329 and Rule 2016. To effectuate compliance, the court is implementing safeguards similar to those identified in the *Becker* decision to prevent future discrepancies between requested and disclosed compensation. Prior to submission of a confirmation order, the Chapter 13 Trustee should confirm that the attorney fees identified in a plan are consistent with those in the Disclosure Form. Any deviation should be met with an objection to that plan requiring

the attorney to comply with the continuing duty to disclose under § 329 and Rule 2016 to ensure that the integrity of the disclosure process is maintained.

D. Application of *In re Village Apothecary* to Chapter 13 Proceedings

In *Boddy*, the Sixth Circuit explained the framework that courts must employ when analyzing the reasonableness of attorney fees under § 330. Section 330 provides, in part, for "reasonable compensation for actual, necessary services rendered . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title . . . ." *Boddy*, 950 F.2d at 336-37. As discussed, courts must first determine the "lodestar" amount, which is calculated by "multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended." *Id.* at 337 (quoting *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990) (citing *Hensley*, 461 U.S. at 433)). Courts then consider the lodestar factors, previously identified. *Id.* at 338 (citing *Robertson*, 772 F.2d at 1152 n.1). One of the lodestar factors is the "results obtained." *In re Village Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022).

In *Village Apothecary,* special counsel for the trustee recovered $38,000 for the Chapter 7 estate. *Id.* at 943-44. Special counsel was initially hired to investigate potential causes of action that, if successful, could have benefitted the estate by approximately $1,655,962. *Id.* at 945. After recovering $38,000, special counsel then filed a fee application with the court seeking a little more than $37,000. *Id.* at 946. The bankruptcy court reduced the fees by half after applying the lodestar factors, balancing the "amount in controversy" with the "results obtained." *Id.* The bankruptcy court concluded that "the level of success was essentially nothing (since nothing would be left over for the creditors)." *Id.*

At issue in that case was whether the "results obtained" factor conflicted with one of the codified factors instructing courts to look at whether a service was "beneficial at the time at which

the service was rendered." *Id.* at 949. The Sixth Circuit determined there is no inconsistency in having courts look at both factors and explained that consideration of both factors "ensures that bankruptcy courts do not automatically bar fees for attorneys when they are not ultimately successful." *Id.* (citing *Barron & Newburger, P.C. v. Tex. Skyline, Ltd.* (*In re Woerner*), 783 F.3d 266, 276 (5th Cir. 2015) (en banc) ("Whether the services were ultimately successful is relevant to, but not dispositive of, attorney compensation.")). The Sixth Circuit upheld the bankruptcy court's reduction of fees, finding that the "results obtained" were "nonetheless minimal." *Id.* at 951. The reasoning in *Village Apothecary* and discussion of the "results obtained" factor applies to Chapter 13 proceedings. See *In re Wilson-Oliver*, No. 21-21272-dob, 2022 Bankr. LEXIS 2444, 2022 WL 4073567 (Bankr. E.D. Mich. Sept. 2, 2022); *In re Hamming*, No. 21-01475-swd, 2022 Bankr. LEXIS 2807, 2022 WL 6228225 (Bankr. W.D. Mich. Oct. 3, 2022).

In *Wilson-Oliver*, the court awarded $4,000 in attorney fees, plus costs in the amount of $238.88, reducing the requested attorney fees by $6,440.50. 2022 Bankr. LEXIS 2444, at *1, 2022 WL 4073567, at *1. The case contained a series of complications, including a foreclosure action against the debtor, outstanding real estate taxes, dismissal of an earlier bankruptcy case, the failure to timely file a motion to extend the automatic stay, and an unconfirmable Chapter 13 plan. *Id.* at *4-6; 2022 WL 4073567, at *2. Eventually, counsel for the debtor withdrew from representation, due to a breakdown in communication. *Id.* at *7, 2022 WL 4073567, at *3. Following the court's order granting counsel's motion to withdraw, counsel filed a fee application requesting fees of $10,440.50 and expenses of $238.88. *Id.* The debtor objected to counsel's application, arguing that the requested fees were excessive. *Id.*

The court considered the "results obtained," or lack thereof, and agreed with the debtor. *Id.* at *10-11, 2022 WL 4073567, at *4. The court determined that the debtor had a viable Chapter 13

case, in that she had little unsecured debt, significant real estate holdings, and a sustainable source of income to make her plan payments. *Id.* at *11, 2022 WL 4073567, at *4. Counsel initially estimated attorney fees of $4,000 to represent the debtor through confirmation, with an additional $3,500 for representation through completion of the case. *Id.* at *12, 2022 WL 4073567, at *4. The court determined that a portion of counsel's requested fees in the amount of $4,337.50, which were attributable to the stay litigation, were not connected to the benefit of the debtor's estate, as such the fees were higher than expected due to counsel's negligence. *Id.* at *12-13, 2022 WL 4073567, at *5. The court further found that other services were neither beneficial to the estate nor necessary to the administration of the estate, primarily because confirmation of a Chapter 13 plan on terms acceptable to the debtor was unlikely. *Id.* at *13-14, 2022 WL 4073567, at *5. In reaching its decision reducing the requested fees to $4,000, the court committed counsel to his initial fee estimate because counsel was in "the best position to know the complexities of Debtor's case and obstacles to confirmation." *Id.* at *14, 2022 WL 4073567, at *5. Moreover, the court held that "per *Village Apothecary*, an award of $4,000 recognizes the results obtained in this case, which is a stay of proceedings for approximately nine months and the potential, but unrealized confirmation of a Chapter 13 Plan." *Id.* at *15, 2022 WL 4073567, at *5.

In *Hamming*, the court considered the "results obtained" when determining debtors' counsel's application for $24,908.15 in fees and expenses in addition to the $1,400 the debtors already paid him and the $3,500 he received as his "no look" fee upon confirmation. 2022 Bankr. LEXIS 2807 at *1, 2022 WL 6228225 at *1. Although no party had objected to the application, the court conducted an independent review. *Id.* The *Hamming* court explained that the Sixth Circuit's decision in *Village Apothecary* resonated with the current case because most of the fees at issue in counsel's application related to an adversary proceeding through which the only "results

obtained" involved generating fees for debtors' counsel and opposing counsel. *Id.* at *1-2, 2022 WL 6228225 at *1. The court also recognized, however, that § 330(a)(3) "warns against Monday-morning-quarterbacking by directing the court to consider whether the representation was 'beneficial *at the time at which the service was rendered* . . . .'" *Id.* at *2, 2022 WL 6228225 at *1 (quoting 11 U.S.C. § 330(a)(3) (emphasis added)). The court considered the response formally endorsing the fee application by both the United States Trustee ("UST"), "who serves as the 'bankruptcy watch dog,' and the chapter 13 trustee . . . who vigilantly advocates for the estate (and derivatively, creditors)[.]" *Id.* Despite these concerns, the court deferred to the UST and the Chapter 13 trustee, as well as the debtors, and approved the application for $23,000, which reflected the original discount described in the application and the additional discount reported in the UST's response. *Id.* at *8, 2022 WL 6228225 at *4.

E. Reconciling *Village Apothecary* and 11 U.S.C. § 330(a)(4)(B)

"In general, only legal services that benefit the bankruptcy estate are compensable in a bankruptcy case." *In re Pochron*, No. 21-31410, 2022 Bankr. LEXIS 1041, at *7, 2022 WL 1085459, at *3 (Bankr. S.D. Ohio Apr. 8, 2022) (citing *In re James Contracting Group, Inc.*, 120 B.R. 868, 872 (Bankr. N.D. Ohio 1990) ("It is a well-settled legal maxim that in order for legal fees to be compensable, the legal services rendered must have benefitted the estate.")). However, § 330(a)(4)(B) allows for an exception to the general rule, under which the court may award compensation from the bankruptcy estate to debtor's counsel in Chapter 12 or Chapter 13 cases for services provided to the debtor that do not directly benefit the bankruptcy estate. *Id.* at *7-8, 2022 WL 1085459, at *3 (citing *In re Beutel*, No. 19-12690-13, 2021 Bankr. LEXIS 628, at *6-7, 2021 WL 1093969, at *2 (Bankr. W.D. Wis. Mar. 17, 2021)). Section 330(a)(4)(B) provides:

> In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the 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). Compensable services under § 330(a)(4)(B) must: "1) be provided to an individual debtor; 2) be provided 'in connection with' a Chapter 12 or Chapter 13 case; 3) benefit the debtor; 4) be necessary to the debtor; and 5) otherwise be appropriate under the terms of § 330." *Pochron*, 2022 Bankr. LEXIS 1041, at *9, 2022 WL 1085459, at *4 (citing *In re Hunt*, 588 B.R. 496, 499 (Bankr. W.D. Mich. 2018)).

While the decision in *Village Apothecary* case emphasizes the court's duty to consider the "results obtained" when determining the reasonableness of attorney compensation, particularly "results obtained" for the benefit of the bankruptcy estate, the court recognizes that the exception under § 330(a)(4)(B) permits attorneys to be compensated for services that solely benefit the individual debtor, rather than the broader bankruptcy estate. Still, the application of § 330(a)(4)(B) is not without constraints; it must be considered in the larger context of § 330(a). To justify compensation under this exception, the legal services provided must not only benefit the debtor, but also be necessary and appropriate under § 330. Crucially, appropriateness under § 330 includes an evaluation of the results obtained by the attorney's work in the case. Thus, in reconciling *Village Apothecary* and § 330(a)(4)(B), the court is tasked with the careful balancing act between rewarding counsel for necessary services to a debtor, while also ensuring that such compensation aligns with the broader objectives and outcomes of the bankruptcy process.

VI. Analysis of Applications Under the Law

Consistent with this court's prior decisions in *Spear* and *Pochron*, and based upon this court's experience with and knowledge of attorney rates in Dayton and the Southern District of Ohio, the court finds that the rates charged by Dearfield for G. Timothy Dearfield's, Julie Terry's, and Elizabeth Thompson's services are appropriate and within the market rate for attorneys and

paralegals of comparable experience and skills. Instead, the court focuses its review of the Applications on the other factors outlined in § 330 and *Boddy*, particularly the amount of time spent on particular matters, the nature of the work performed, and the results obtained for both the bankruptcy estate and the Debtor individually under § 330(a)(4)(B). The court will begin its analysis of those factors with an examination of the benefits achieved in these two cases, as it believes that the results obtained in these cases as viewed from the purpose of Chapter 13 provides the appropriate framework through which the significant fees billed in these cases must be viewed. After discussing *Village Apothecary* and the results obtained, the court will examine the particular itemizations on the Applications.

A. Application of *Village Apothecary* to the Debtor's Cases

Before the court examines the specific itemizations in the Applications, the court will first address the court's overarching concern with these cases as related to the results obtained. The results obtained in a Chapter 13 case must be measured against the Congressional purpose in creating Chapter 13:

> The purpose of Chapter 13 is to enable an individual, under court supervision and protection, to develop and perform under a plan for the repayment of his debts over an extended period. In some cases, the plan will call for full repayment. In others, it may offer creditors a percentage of their claims in full settlement.

H.R. Rep. No. 95-595 at 118 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6079 (cited in *In re Smith*, 848 F.2d 813,816-17 (7th Cir. 1988)); see also *In re Myers*, No. 2:21-bk-00123-FMD, 2023 WL 350183, at *4-5, 2023 Bankr. LEXIS 139, at *12-13 (Bankr. M.D. Fla. Jan. 20, 2023) (discussing the purpose and legislative history of Chapter 13). One court stated:

> Chapter 13, as the legislative history sets forth, was created to protect overextended individual wage earners desiring to voluntarily repay their debts through the automatic stay and provide financial relief through a fresh start. . . . Although debtors indeed may use Chapter 13 to save their homes, the legislative purpose of Chapter 13 is to maximize recovery to creditors by allowing debtors to cure arrears and make payments over a period of up to 60 months.

In re Pierre, 468 B.R. 419, 425 (Bankr. M.D. Fla. 2012). Thus, the goal of a Chapter 13 case should be to: a) first, file the case and a feasible Chapter 13 plan that provides payment to the debtor's creditors over a three or five year period (depending upon whether the debtor is above median income or below median income)[9]; b) second, obtain confirmation of the plan; and c) third, successfully execute that plan by making the payments required by the plan over the three or five year period. Successful filing and execution of a Chapter 13 plan provides for payment of some or all of the debtor's creditors at least a portion of their debts and the opportunity of the debtor to obtain a discharge of the debtor's dischargeable debts and to retain certain assets in exchange for those payments.

Using a baseball analogy, the Debtor in these cases can be described as, at best, only making it to first base because he filed his Chapter 13 plans in both cases, but never made it further than the filing of the plans. The Debtor was thrown out on his way to second base in both cases. In the first case, the Debtor was thrown out (dismissed) because he never filed his prepetition tax returns – a requirement of confirmation of a plan under §§ 1325(a)(9) and 1308. In the second case, he was thrown out (dismissed) because he did not attend the meeting of creditors and failed to commence making payments under his plan. The Chapter 13 plans were never confirmed, and the Debtor never made any payments to his creditors through the plans and, therefore, the Debtor was not able to obtain his discharge. Thus, other than the potential payment of administrative expenses to Dearfield for attorney fees and the statutory Chapter 13 Trustee fees[10], there were no

[9] See 11 U.S.C. § 1325(b)(4).

[10] Whether Chapter 13 Trustees are entitled to payment of their fees in cases dismissed prior to confirmation is subject to a split in the case law. Compare *In re Soussis*, 624 B.R. 559 (Bankr. E.D.N.Y. 2020) and *In re Baum*, 650 B.R. 852 (Bankr. E.D. Mich. 2023) (Chapter 13 Trustee entitled to be paid percentage fee if the case is dismissed preconfirmation) with *Marshall v. Johnson*, 100 F.4th 914 (7th Cir. 2024); *Evans v. McCallister* (*In re Evans*), 69 F.4th 1101 (9th Cir. 2023); *Goodman v. Doll* (*In re Doll*), 57 F.4th 1129 (10th Cir. 2023); *Skehen v. Miranda (In re Miranda)*, 285 B.R. 344 (table), 2001 WL 1538003, 2001 Bankr. LEXIS 1549, (B.A.P. 10th Cir. 2001); *In re Johnson*, 650 B.R. 904 (Bankr. N.D. Ill. 2023); *In re Crespin*, No. 17-11234 ta13, 2019 WL 2246540, 2019 Bankr. LEXIS 1575

positive results obtained for these Chapter 13 cases as relates to the bankruptcy estate. The purpose of Chapter 13 was clearly not accomplished in either of the two cases. Accordingly, the only benefits achieved could be those to the Debtor individually under § 330(a)(4)(B).

In fact, that is what Dearfield argues he accomplished with these cases – benefits to the Debtor by stopping the foreclosure and giving the Debtor the opportunity to save the equity in his home. As stated in his memorandum filed in support of the Applications:

> Results obtained can be quite different for a debtor versus the estate. For example, keeping Debtor in his home for a longer time period may benefit him but not the estate. In these cases, Debtor was looking to sell his home after the school year began, which would benefit him as well as the estate. Further, the Chapter 13 case enabled Debtor to satisfy property and support obligations in his Warren County domestic relations case. Both cases have benefitted Debtor by preserving equity (results obtained) which would have evaporated in either foreclosure sale scheduled. Some $500,000.00 of equity could be dissipated by a foreclosure sale of 2/3 of value.

No. 23-30280, Doc 61 at 3-4, ¶ 11. However, in order for services to be compensable as benefitting the debtor and not necessarily the bankruptcy estate, those services must still be: a) rendered "in connection with the bankruptcy case;" b) reasonable and necessary; and c) "beneficial toward the completion of the case." *In re Steen*, 631 B.R. 704, 709 (Bankr. N.D. Tex. 2021). "Services that benefit the debtor in connection with the case are services that facilitate the successful completion of the debtor's plan." *In re Phillips*, 291 B.R. 72, 82 (Bankr. S.D. Tex. 2003) (citation omitted).

The court would certainly give more weight to Dearfield's argument as to benefit to the Debtor made in connection with the bankruptcy case under § 330(a)(4)(B) had the Debtor confirmed a plan and at least commenced making payments to creditors through a plan or successfully sold the Property through the Chapter 13 case, benefitting creditors and potentially

(Bankr. D.N.M. May 23, 2019); and *In re Dickens*, 513 B.R. 906 (Bankr. E.D. Ark. 2014) (holding that a Chapter 13 Trustee is not entitled to be paid percentage fee when a case is dismissed preconfirmation). This issue has not been raised in these cases and court expresses no opinion on the question.

himself. But, of course, that is not what occurred here. "[A]ttorney services that merely allow the debtor to use a creditor's collateral (without payment) are not necessary or beneficial toward confirmation of a plan or to completion of the case and therefore do not entitle an attorney to compensation." *Phillips*, 291 B.R. at 83.

Despite Dearfield's statements in support of the Applications, the court must consider the total effectiveness and justification of the billed hours in light of the preconfirmation dismissals resulting from the Debtor's non-compliance with procedural requirements. While it appears to the court that Dearfield's efforts to counsel and protect the Debtor's assets were initially justified, the actual benefits of such efforts were short-lived at best, given that both cases were dismissed due to the Debtor's failures to adhere to critical procedural mandates, including the filing of the Debtor's tax returns, commencement of plan payments, and required attendance at the meeting of creditors. And the benefits to the Debtor personally must be related to the Debtor's effort to successfully complete the Chapter 13 plan. *See Phillips*, 291 B.R. at 83; *In re Davis*, No. 07-51337-NPO, 2009 WL 4856199, at *3-4, 2009 Bankr. LEXIS 4099, at *8-9 (Bankr. S.D. Miss. Dec. 9, 2009) (citation omitted). While Dearfield's services on behalf of the Debtor could have aided in fulfilling the purpose of Chapter 13 of providing payment to creditors over an extended period of time, the result of the services was simply to delay the foreclosure proceeding.

The court recognizes the initial preventive measures taken by Dearfield offered temporary relief from foreclosure; however, the overarching legal strategy failed to secure a lasting resolution or benefit for the Debtor and his bankruptcy estate due to the Debtor's lack of compliance in both cases. Therefore, while Dearfield's initial legal services were founded on reasonable expectations of the Debtor's compliance, the practical outcomes and the Debtor's repeated failures to meet

obligations lead the court to question the reasonableness of the requested fees when considering the factors identified in *Boddy*, as well as the results obtained contemplated by *Village Apothecary*.

The court is not averring that counsel are or should be guarantors of their clients' success, willingness to abide by their obligations under the Bankruptcy Code and Bankruptcy Rules, or good faith. In *Village Apothecary*, the Sixth Circuit made clear that an analysis of the benefit to the estate or debtor at the time the services were rendered is warranted and informative:

> Courts . . . can compensate for services that were reasonably beneficial at the time they were performed and benefitted the estate. Or they could compensate a professional even if the services did not benefit the estate.

Village Apothecary, 45 F.4th at 949. However, the court held that "[t]here is no inconsistency in having courts look at both factors." *Id.* The court went on to state that ". . . courts cannot rely on § 330(a)(4) to bar recovery if the services are not beneficial to the estate, but that does not mean they cannot account for that fact when determining whether to lower fees." *Id.* at 950.

Accordingly, the court will examine the fees sought in the Applications from both a benefit to the bankruptcy estate and the Debtor at the time the cases were filed and from a perspective of benefit to the bankruptcy estates upon their conclusion. As noted, the bankruptcy estates received nothing from these cases and the benefit to the Debtor individually in connection with the cases was negligible since the cases ended up being dismissed with no long-term resolution of the foreclosure proceeding and no discharge to the Debtor. However, the court will not deduct a percentage or portion of the fees on account of the lack of benefit to the bankruptcy estate and little overall benefit to the Debtor; rather, the court will circumspectly examine the itemizations submitted by Dearfield.

The other outstanding issue in examining Dearfield's fees and the benefits achieved, or lack thereof, is the total amount of the fees sought — $9,399 for the first case and $3,687 for the second case, for a total of $13,086. As noted, the current maximum no-look fee in the District for

Chapter 13 cases for services performed start to finish is $4,350 (subject to allowance of additional fees for particular additional services provided). In other words, the fees in these two related cases for the Debtor, neither of which even resulted in a confirmed plan, are approximately three times the maximum no-look fee, which would cover most services provided to a debtor in a successful Chapter 13 case through completion of the case. See *Spurlock,* 642 B.R. 269 (Bankr. S.D. Ohio 2022); see also *Harrington*, 2024 Bankr. LEXIS 1341, 2024 WL 2890080.

B. First Application

The court has thoroughly reviewed Dearfield's itemized First Application, in which Dearfield has requested allowable compensation in the amount of $9,399. The court recognizes the necessity for legal professionals to bill their clients for time expended on services rendered; however, upon careful examination of the First Application, the court finds certain billed entries to be disproportionately excessive to the tasks completed. Additionally, the record reveals an excessive allotment of time to tasks that could have been more appropriately handled by support staff. This inefficiency is further underscored by the fact that the Debtor's plan was not confirmed, indicating a misalignment of effort and outcome. Dearfield's approach to managing and executing prepetition and preconfirmation services did not exhibit the level of prudence and economy expected of an experienced debtor's attorney. In consideration of the principles discussed in *Boddy* and in *Village Apothecary*, the court finds that the First Application, as presented, does not meet the requisite standard for reasonableness in light of the services rendered and results achieved. For the reasons below, the court reduces the allowable fees for the First application by $3,555, for a total allowable compensation of $5,844.[11]

[11] The court declines to discuss entries in either of the Applications that the court intends to allow as requested. Instead, the court focuses its discussion on the entries that the court is reducing or disallowing.

1. General Prepetition and Preconfirmation Legal Services: $6,909

The court first discusses the fees sought for general prepetition and preconfirmation services, totaling $6,909. These services included a total of 27.1 hours incurred by Dearfield, with 4.9 hours spent by paralegal Julie Terry, 2.5 hours spent by paralegal Elizabeth Thompson, and the remainder spent by Dearfield. In other words, Dearfield spent 19.7 hours on general prepetition and preconfirmation services in a case that never reached confirmation. At issue is the observed inefficiency of Dearfield's management of time and resources, notably a lack of delegation of administrative tasks, or alternatively, a lack of billing at an administrative rate for such tasks. For the reasons discussed below, the court reduces the allowable compensation in the First Application for general prepetition and preconfirmation legal services by $2,844.75, for a total allowable compensation of $4,064.25.

a. Preparation and Review of Skeletal Petition (Time Entries 5 & 6)

The court is concerned by the substantial time billed for the preparation and review of a skeletal petition. Dearfield spent 1.8 hours preparing and reviewing the skeletal petition for a total of $375, which included a review of a financial report identifying the Debtor's creditors and a review of the Debtor's consumer and business debts (Doc. 49, Entries 5 & 6[12]). On February 21, 2023, Dearfield billed 1.0 hours ($135) at Ms. Terry's rate of $135 for "Initial preparation of petition - skeletal, including review of financial report for all creditors." Doc. 49, Entry 5. A few days later, Dearfield billed 0.8 hours ($240) at his rate of $300 for "Review/edit petition, including consumer debt status versus business debt status." *Id.* at Entry 6.

By its nature, a skeletal petition is intended to provide only the most basic information about the Debtor. The court questions the necessity of such extensive time entries on a document

[12] Docket references to the First Application refer to Case No. 23-30280.

designed to be issued a preliminary placeholder, lacking significant details regarding the Debtor's financial affairs. The court will reduce allowable time for those services to 1.3 hours at a blended rate of $217.50, for a total of $282.75, reducing the allowable fees by $92.25.

b. Preparation and Review of Schedules and Chapter 13 Plans (Time Entries 11-2, 21, 22, 34, 48, 49, 50, 51 & 52)

Dearfield spent 10.5 hours preparing and reviewing the Debtor's schedules and Chapter 13 plans for a total of $2,490 (Doc. 49, Entries 11-2, 21, 22, 34, 48, 49, 50, 51, & 52).[13] Based on the court's review of Debtor's schedules and Chapter 13 plans, as well as the statements by Dearfield, the court finds the total amount of time spent on these items to be excessive and concludes it necessary to reduce the compensation sought resulting from the court's concerns with the reported time allocations.

Of these 10.5 hours, Dearfield spent 4.7 hours preparing and reviewing the Debtor's initial schedules for a total of $1,170 (Doc. 49, Entries 11-2 & 21). The allocation of almost 5.0 hours solely to the preparation of the initial schedules not only raises concerns regarding efficiency and necessity, but the court finds that certain entries are impermissibly lumped and ambiguous. On March 3, 2023, Dearfield billed 2.0 hours ($270) at Ms. Terry's rate of $135 for "Initial preparation of schedules including telephone/text communications with Debtor regarding further documentation and information needed to complete same schedules." Doc. 49, Entry 11-2. The court perceives this entry to be impermissibly lumped. "Services which have been lumped together into a single entry without a detailed narrative will not ordinarily be compensated." *In re J.F. Wagner's Sons Co.*, 135 B.R. 264, 268-69 (Bankr. W.D. Ky. 1991). "Each task must be listed separately and not combined, or 'lumped' with other tasks so that the Court can discern whether a

[13] Entries 22 and 34 were amended. No. 23-30280, Doc. 55.

reasonable amount of time was spent performing that task." *In re New Bos. Coke Corp.*, 299 B.R. 432, 446-47 (Bankr. E.D. Mich. 2003). As such, the court is "unable to determine the necessity of the activity," *J.F. Wagner's Sons Co.*, 135 B.R. at 269, or "whether a reasonable amount of time" was allocated to the preparation of the schedules as opposed to communication with the Debtor, *New Bos. Coke Corp.*, 299 B.R. at 447. "Authority exists for disallowing *in toto* all services which have been 'lumped' together." *Id.* at 447 (emphasis in original) (citing *In re Copeland*, 154 B.R. 693, 702 (Bankr. W.D. Mich. 1993)).

On March 14, 2023, Dearfield billed 2.7 hours ($810) at Dearfield's rate of $300 for "Continue preparation of schedules." Entry 21. The court characterizes this entry as ambiguous, particularly as Dearfield had already billed 2.0 hours for preparation of the Debtor's schedules. See *id.* at Entry 11-2. The court cannot determine what this continued preparation of the Debtor's schedules included, as the time entry does not adequately describe in detail what services Dearfield performed in relation to the description. See *Pochron*, 2022 Bankr. LEXIS 1041, at *26, 2022 WL 1085459, at *9 (citing *In re Maruko Inc.*, 160 B.R. 633, 641 (Bankr. S.D. Cal. 1993) ("The Court concurs with the Fee Examiner's observation that Attorney 5's entries are vague and ambiguous. It is counsel's duty to fully explain the nature of the services rendered, and she has not done so. The Court disallows $150.")); *In re King*, 546 B.R. 682, 712 (Bankr. S.D. Tex. 2016) (citing *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995)) (disallowing numerous vague entries and stating: "Time entries that do not provide sufficient detail to determine whether the services described are compensable may be disallowed due to vagueness.")). As discussed in *Pochron* and *Spear*, "much of the responsibility for preparing schedules can be done by paraprofessionals with oversight and review by an attorney." *Pochron*, 2022 Bankr. LEXIS 1041, at *25, 2022 WL 1085459, at *9; see also *Spear*, 636 B.R. at 773-74.

Also on March 14, 2023, Dearfield expended 2.0 hours ($600) at Dearfield's rate of $300 for "Preparation of plan including 363 sale, sources of income/family support, etc." Doc. 49, Entry 22 (as amended by No. 23-30280, Doc. 55). This entry is problematic for the same reasons as Entry 11-2. Not only does the court question the amount of time spent preparing a Chapter 13 plan that ultimately failed to reach confirmation, but based on the ambiguity of the entry, the court cannot discern the necessity of the amount of time spent on this task. Although Dearfield explains that a portion of this time was spent incorporating details of the § 363 sale into the plan, as well as reviewing the Debtor's sources of income, the time entry as written lacks sufficient detail informing the court as to what "etc." references.

Of particular concern is the 1.0 hour ($300) billed on April 26, 2023 at Dearfield's rate of $300 for "Review schedules for deficiencies discovered through Warren County Common Pleas/DR court filings, including 388 entries on docket consisting of motions, contempt actions, supersedeas bond, etc." Doc. 49, Entry 34 (as amended by Doc. 55). If these deficiencies stemmed from initial errors through Dearfield's preparation of the Debtor's schedules, the court finds it inappropriate to compensate for time spent correcting counsel's own oversights, particularly in light of the extensive communications and meetings between the Debtor and Dearfield, as well as a considerable amount of time dedicated to researching the Debtor's assets and liabilities. The burden rests with Dearfield to provide enough information to allow the court to make an informed decision, and here, the court lacks the requisite information to justify the allowance of the requested fees for Entry 34.

Finally, the 2.8 hours reported for amending the Debtor's schedules and the Chapter 13 plan also appear excessive, given the lack of substantive edits resulting in an unconfirmable plan. On May 22, 2023, Dearfield billed 2.0 hours ($270) at Ms. Thompson's rate of $135 for the

following tasks: (1) 0.5 hours for "Preparation of Amended Statement of Current Monthly and Disposable Income Form 122"; (2) 0.5 hours for "Preparation of Amended Statement of Financial Affairs (SOFA)"; (3) 0.5 hours for "Preparation of Amended Chapter 13 Plan"; and (4) 0.5 hours for "Preparation of Amended Schedules A/B, C and E/F." Doc. 49, Entries 48, 49, 50, & 51. That same day, Dearfield billed 0.8 hours ($240) at Dearfield's rate of $300 for "Review/edit Amended Form 122, SOFA, Plan, and Schedules A/B, C, E/F." *Id.* at Entry 52.

The court has reviewed the initial Statement of Current Monthly Income and Calculation of Commitment Period [Form 122C-1] (Doc. 16 at 41-44) and the amended filing (Doc. 28) the only substantive change is found on Line 10, whereby the Debtor has substituted "Deferred Comp" in the monthly amount of $2,913.84 in place of "Rollover IRA Distributions" in the monthly amount of $5,000. Although the calculations within the amended filing certainly differ due to the decreased monthly income, the court finds that the substitution on Line 10 and simple math to recalculate the sums for Lines 11 and 15b do not justify the expenditure of 0.5 hours.

Similarly, the court has reviewed the initial Statement of Financial Affairs ("SOFA") (Doc. 16 at 32-38) and the amended filing (Doc. 29), and notes only four modifications: (1) Line 5 was amended to increase the Debtor's gross income sourced by distributions and commissions from $16,500 to $20,000; (2) Line 9 was amended to include Debtor's appeal of his divorce decree; (3) Line 10 was amended to include the $99,792.93 supersedeas bond; and (4) Line 27 was amended to eliminate the Debtor's business connection to Fidelity Mortgage, Inc. Once again, the court finds that the minor modifications do not justify the expenditure of 0.5 hours.

The court acknowledges that amendments to the Debtor's schedules (Doc. 31) and Chapter 13 plan (Doc. 30) required more time than the amendments to the previously discussed filings; however, in light of the total time the Dearfield spent preparing and reviewing routine Chapter 13

documents, as well as the failure to reach confirmation, the court will not allow the full compensation requested for Entries 50, 51, and 52. Specifically, Entry 52 refers to Dearfield's review of all four amended documents. Had Dearfield identified the amount of time Dearfield expended on reviewing each amended document, the court would not be left guessing whether the time to review the documents was reasonable, particularly as the court finds the amount of time spent preparing the amended Form 122C-1 and the SOFA to be excessive.

The burden rests on Dearfield to include sufficient information to allow the court to make an informed decision as to whether specific services were necessary and whether time expended on such services was reasonable. For the reasons discussed, the court finds that portions of the First Application related to the preparation and review of the Debtor's schedules and Chapter 13 plans are not only excessive, but impermissibly lumped and vague. Consequently, the court finds it reasonable to adjust the fees requested to reflect a more judicious allocation of time and responsibilities. Regarding the lumped Entry 11-2, the court will reduce allowable time for those services to 1.0 hour at Ms. Terry's rate of $135, for a total reduction of $135. As for the ambiguous and excessive Entries 21 and 22, the court will reduce allowable time to 2.2 hours at a blended rate of $217.50, for a total of $478.50, reducing the allowable fees by $931.50. See *Pochron*, 2022 Bankr. LEXIS 1041, at *26, 2022 WL 1085459, at *9. The court will deduct the entire requested amount of $300 for Entry 34. For Entries 48 through 52, the court will eliminate 1.0 hour at a blended rate of $217.50, for a total of $292.50, reducing the allowable fees by $217.50.

c. Communications and Meetings with the Debtor (Time Entries 1, 2, 3, 8, 10, 15, 17, 23, 24, 25, 28, 33, 35, 36, 42, 44, 45, 53, 62, 66, & 70)

Dearfield spent 7.8 hours either communicating with the Debtor or in meetings with the Debtor, for a total of $2,125.50 (Doc. 49, Entries 1, 2, 3, 8, 10, 15, 17, 23, 24, 25, 28, 33, 35, 36, 42, 44, 45, 53,[14] 62, 66, & 70).

The court finds some of the billed entries for text message communication with the Debtor to be excessive. A substantial portion of this time involved tasks that could, and should, have been delegated to paraprofessionals at an administrative rate. "While attorney supervision is necessary for performance of all bankruptcy-related services, much of the general prepetition and preconfirmation services can be performed by paralegals or legal assistants at appropriate rates for those paraprofessionals." *Spear*, 636 B.R. at 773. In *Spear*, the court examined precedent applicable law on the appropriate rate for routine and clerical work:

> In reviewing a fee application under these circumstances, another bankruptcy court stated:
>
> > The Court should be mindful that not all services should carry the same compensation . . . . The fact that an experienced attorney elects to perform routine ministerial services which could be performed by others far less experienced does not increase the value and should not increase the cost to the estate for these services.
>
> *In re Union Cartage Co.*, 56 B.R. 174, 178 (Bankr. N.D. Ohio 1986). See also *In the Matter of Ferkauf, Inc.*, 42 B.R. 852, 858 (Bankr. S.D.N.Y. 1984) ("[T]he hourly fee awarded should be adjusted when a significant percentage of the total work completed is of such a routine nature. Compensation for routine work should be discounted."); *Busy Beaver*, 19 F.3d at 852 ("[T]he appropriate rate the attorney will command for paralegal services will ordinarily parallel the paralegal's credentials and the degree of experience, knowledge, and skill the task at hand calls for.") (citation omitted); *In re Vogue*, 92 B.R. 717, 718 (Bankr. E.D. Mich. 1988) ("[W]hen an experienced attorney does clerk's work, he or she should be paid clerk's wages."). Thus, counsel need to push work down to the lowest available rate for which such work can be competently performed or otherwise adjust the billing

[14] As amended by No. 23-30280, Doc. 55.

> accordingly so that clients are not excessively billed for the level of the work performed.

636 B.R. at 773-74.

The billing of routine text communications at an attorney rate does not align with customary billing practices and fails to reflect efficient use of legal services. In sum, Dearfield billed 2.4 hours communicating with the Debtor via a text message for a total of $588 (Doc. 49, Entries 2, 10, 15, 17, 23, 33, 35, 36, 42, 44, 45, 62 & 66). The court has identified the following entries as either excessive or improperly billed by Dearfield at Dearfield's rate of $300:

- 0.3 hours ($90) on March 14, 2023 for "Text message communication with Debtor regarding execution of schedules, plan, etc and to prepare to pay $7,000/mo minimum; execution of schedules and plan scheduled for 3/15/23." Doc. 49, Entry 17.
- 0.1 hours ($30) on March 15, 2023 for "Receive/review text message from Debtor stating he would not be able to make the meeting and would call later." *Id.* at Entry 23.
- 0.1 hours ($30) on April 26, 2023 for "Text message to Debtor regarding status of tax returns and IRA statements." *Id.* at Entry 33.
- 0.1 hours ($30) on May 4, 2023 for "Text message communication to Debtor regarding being out of time to file the amended plan." *Id.* at Entry 35.
- 0.5 hours ($150) on May 9, 2023 for "Text message communication to Debtor regarding Trustee and Creditors agreeing to 14 additional days to file amended plan; house to be for sale in near future; conversion to Chapter 7; homestead exemption." *Id.* at Entry 42.
- 0.1 hours ($30) on May 15, 2023 for "Text message to Debtor regarding 5/26/23 date for 2004 Examination." *Id.* at Entry 44.

Although the court recognizes that Dearfield's request for compensation for the entries amounts to no more than $360, allowing compensation at Dearfield's rate for these tasks would

ignore the distinction between administrative or clerical tasks and legal tasks that must be performed by a licensed attorney. Beginning with Entry 17, notwithstanding its ambiguity with respect to the "etc" included in the description, the court finds the entry to be clearly administrative in that Dearfield is communicating with the Debtor to schedule a time for the Debtor to review and execute the Debtor's schedules and Chapter 13 plan. Entries 23 and 44 refer to additional scheduling matters and lack reference to legal work that necessitated Dearfield's billable rate of $300. As such, the court finds Entries 23 and 44 to be administrative. Entries 33 and 35 are described as text messages prepared by Dearfield to the Debtor to provide the Debtor with brief case updates, without any substantive discussions between the Debtor and Dearfield. Accordingly, Entries 33 and 35 appear also administrative in that a competent paralegal could effectively communicate with the Debtor as to both outstanding document requests between Dearfield and the Debtor and the passing of a deadline to file an amended plan. Lastly, the court questions the 0.5 hours billed for Entry 42, in that this too is described as a text message prepared by Dearfield to the Debtor, not a conversation between the Dearfield and the Debtor. The court finds 30 minutes to prepare a text message excessive. The court will allow the time for Entries 17, 23, 33, 35, and 44 at an administrative rate of $135, reducing the allowable fees by $115.50. For Entry 42, the court will eliminate 0.3 hours at Dearfield's rate $300, for a total of $60, reducing the allowable fees by $90.

Dearfield billed 4.5 hours meeting with the Debtor for a total of $1,350 (Doc. 49, Entries 8, 25, 28, & 53). Of particular concern is Entry 53, in which Dearfield billed 2.0 hours ($600) on May 22, 2023 for "Meeting with Debtor to review, edit and execute amendments." Doc. 49, Entry 53 (as amended by Doc. 55). Upon comparison to Entry 25, in which Dearfield billed 1.0 hours ($300) on March 20, 2023 for "Meeting with Debtor to review and execute schedules and plan,"

the court is skeptical that the review and execution the Debtor's amended schedules and Chapter 13 plan would necessitate twice the amount of the time as reviewing and executing the Debtor's initial schedules and Chapter 13 plan. See Doc. 49, Entry 25.

While the court acknowledges the necessity for in-person meetings with the Debtor, the court expects that such extensive interactions would have provided sufficient insight to determine the feasibility of the Debtor's Chapter 13 plans. The continued pursuit of an unconfirmable plan suggests a lack of judicious discernment in legal representation. When considering the factors discussed in *Boddy*, including the "results obtained," or lack thereof, the court must adjust the requested fees to reflect a more reasonable allocation between attorney and administrative time, corresponding more closely to the nature of the work performed. Despite these meetings, the result obtained in this case was a stay of the Debtor's foreclosure proceedings and "the potential, but unrealized confirmation of a Chapter 13 Plan." *Wilson-Oliver*, 2022 Bankr. LEXIS 2444 at *15, 2022 WL 4073567 at *5. Consequently, the court will reduce allowable time for Entries 25 and 53 to 2.3 hours at Dearfield's rate of $300, for a total reduction of $510.

d. Additional Ambiguous, Excessive, and Paraprofessional Entries (Time Entries 19, 20, 29, 40, 41, & 57)

As previously discussed, the court may disallow vague and ambiguous entries that do not provide sufficient detail with respect to what the entries mean or what services were included. See *Pochron*, 2022 Bankr. LEXIS 1041, at *26, 2022 WL 1085459, at *9. The court may further reduce the hourly rate for entries, "while billed by counsel at counsel's hourly rate, were services which a paraprofessional could have performed at a lesser rate[.]" *Id.*

The court has identified the following entries as ambiguous and inappropriately billed at Dearfield's rate:

- 0.6 hours ($180) on March 19, 2023 for "Follow-up analysis of child support arrears and current order." Doc. 49, Entry 19.
- 0.3 hours ($90) on March 19, 2023 for "Analysis of auto and home insurance deficiencies." *Id.* at Entry 20.
- 0.2 hours ($60) on June 5, 2023 for "Review proposed agreed order and email approval for order to be uploaded." *Id.* at Entry 57 (as amended by Doc. 55).

Based on the descriptions, the court cannot determine the necessity of Entries 19 and 20. The court has not been provided with any information, nor does the docket reveal, as to what analysis was required of the Debtor's child support arrearage or insurance deficiencies. Moreover, assuming these entries merely mean that Dearfield reviewed certain documents related to the Debtor's child support arrearage and insurance deficiencies, Dearfield's paralegals are capable of such tasks and the appropriate billing rate would be $135. The court further finds Entry 57 to be vague in that the description lacks sufficient detail to allow the court to identify which agreed order Dearfield is referring to. The court declines to recategorize Entries 19, 20, and 57 as administrative due to their ambiguities. Instead, the court will deduct the entire requested amount of $330.

On April 14, 2023, Dearfield billed 0.2 hours ($60) for "Receive/review agreed order denying confirmation of Chapter 13 Plan ordering amended plan," and on May 9, 2023, Dearfield billed 0.3 hours ($90) for "Receive/review Agreed Order to Extend Time to File Amended Chapter 13 Plan" for a total of 0.5 hours ($150) at Dearfield's rate of $300. Doc. 49, Entry 29 & 41. The court has reviewed the agreed orders (Docs. 21 & 25) referenced in the descriptions and finds the total 0.5 hours billed to be excessive. The court is not convinced that tasks of reviewing routine, one-page agreed orders necessitated more than 0.2 hours. The court reduces the allowable time for these entries to 0.2 hours, reducing the allowable fees by $90.

Also on May 9, 2023, Dearfield billed 0.2 hours ($60) at Dearfield's rate of $300 for "Email communications with Josh Davidson regarding an agreed-upon date for 2004 Examination." Doc. 49, Entry 40. Like similar entries previously discussed, Entry 40 describes an administrative task of scheduling the Debtor's 2004 Examination. Therefore, the court will allow the time for Entry 40 at an administrative rate of $135, reducing the allowable fees by $33.

2. Post-Filing Work: Research and Work Related to Foreclosure Action, IRS Lien, and Debtor's potential beneficial interest in Indiana trust: $2,490 (Time Entries 4, 9, 12, 13, 14, 16, 18, 46 & 47)

A second category of fees sought relate to services provided to the Debtor concerning a foreclosure suit filed by Fifth Third against the Debtor on the Property, a decade-old IRS lien, and the Debtor's potential beneficial interest in an Indiana trust. For these services, Dearfield billed 10.5 hours for a total of $2,490 in fees, with the majority of time allocated to research (Doc. 49, Entries 4, 9, 12, 13, 14, 16, 18, 46 & 47). As discussed earlier, "[t]he results obtained are an important consideration in determining the reasonableness of attorney fees sought." *Spear*, 636 B.R. at 775. The court finds some of these entries to be excessive, impermissibly lumped, and inconsistent with the results obtained for either the Debtor or his estate.

Dearfield billed a total of 3.9 hours ($526.50) at Ms. Terry's rate of $135 for various research related to the Union Savings Bank judgment lien and an IRS lien for tax years 2005 through 2011 (Doc. 49, Entries 4, 12 & 13). On February 16, 2023, Dearfield expended 1.2 hours ($162) for "Research regarding foreclosure lawsuit – determine creditors who have interest in property, including Fifth Third's first and second mortgages, HOA, real estate taxes and Union Savings judgment lien ($800,000)." Doc. 49, Entry 4. On March 3, 2023, Dearfield conducted additional research, expending 0.5 hours ($67.50) for "Research Union Savings 2010 judgment lien and CJ perfected/attached to real estate in Warren County OH" and 2.2 hours ($297) for

"Research IRS $2,000,000.00 lien filed for '05, '06, '07, '08, '09, '10 and '11; research lien release as to ex-spouse and then lien release/cancel as to Debtor." *Id.* at Entries 12 & 13.

Although these entries were billed at the reduced administrative rate, the court nonetheless finds the time spent on Entry 13 for research related to the IRS lien to be excessive. In *Spear*, the court expressed concern regarding the number of hours counsel billed for research related to a "catfishing" scam, as the court was "unable to discern any legal remedy sought that relates to this matter." 636 B.R. at 775. Likewise, here the court fails to see how the cancellation or release of a ten-plus year-old tax lien affects the Debtor's current tax obligations or bears any relation to the Debtor's case. As of March 9, 2023, the time of the research, the IRS had not even filed a proof of claim. Based on Dearfield's statements at the hearing, this $2 million tax lien was resolved prior to 2020. Doc. 64, Transcript of Hearing ("Tr.") at 7. It is incumbent upon counsel to fully explain the necessity of time entries for services lacking a clear nexus to the Debtor's case. Therefore, the court will reduce the allowable time for this entry by 1.4 hours, reducing the allowable fees by $189.

On March 9, 2023, Dearfield billed 0.5 hours ($150) at Dearfield's rate of $300 for "Review research done by paralegal regarding Union Savings and IRS liens. Counsel Debtor via telephone voicemail regarding obligation to file four latest tax returns (2022, 2021, 2020 and 2019) ASAP." Doc. 49, Entry 14. That same day, Dearfield billed 1.0 hour ($300) at Dearfield's rate of $300 for "Follow-up research regarding Union Savings Bank $800,000 lien. Discuss with Debtor, who believes same should be reduced by foreclosure sale proceeds of Florida condo." *Id.* at Entry 16. The court finds both Entries 14 and 16 to be impermissibly lumped, in that both descriptions include correspondence with the Debtor, in addition to the review of Ms. Terry's research and Dearfield's own follow-up research. The court is unable to identify how much time was allocated

to each task within the descriptions and whether such time was reasonable. As a result, the court will allow the time for Entries 14 and 16 at a blended rate of $217.50, for a total of $326.25, reducing the allowable fees by $123.75.

Lastly, the court notes with concern the number of hours billed by Dearfield for legal research on the Debtor's potential beneficiary interest in an Indiana trust. A total of 3.5 hours was allocated to researching relatively well-established principles of law, an expenditure of time that seems excessive given the straightforward nature of the issue and the precedential clarity surrounding the legal issues involved. On May 19, 2023, Dearfield billed 3.5 hours ($1,050) at Dearfield's rate of $300 for "Research Lake County IN property and estate/elder planning done for Debtor's Parents; determination of Debtor's interest as beneficiary and effect on Chapter 13 estate." Doc. 49, Entry 46.

Upon inquiry into Entry 46 at the hearing, Dearfield explained that given the "quasi-sophisticated" nature of the Debtor, Dearfield believed he needed to have a "substantive knowledge of what it's all about" when discussing the trust with his client as a "beneficiary." Tr. at 33-34. The court questioned the reasonableness of Entry 46, in that research related to the Debtor's potential interest in the trust should have been limited to what was necessary for purposes of disclosure. Dearfield suggested that further inquiry into the Debtor's parents' trust was required in order to determine the Debtor's interest as the Debtor's parents did not revise the trust documents following the deaths of other beneficiaries. Tr. at 34. Dearfield explained that the Debtor ultimately disclosed an interest in the trust on the Debtor's schedules; however, Dearfield could not recall whether that interest had an associated value on the schedules. *Id.* at 34-35. Upon review of the Debtor's amended schedules, the court notes that the Debtor disclosed his interest in a revocable living trust with a value of $0. See Doc. 31 at 7.

While the court acknowledges that thorough research is foundational to effective advocacy, there appears to be a disproportionate allocation of time which, absent a more compelling justification, challenges the reasonableness of the fees claimed. Although Dearfield claimed that the research was necessary to determine the best interest of the creditors (Tr. at 35), such an inquiry does not justify the extensive outlay of hours that should have reasonably required significantly less time based on the complexity of the issues at hand – whether the Debtor had an interest in a revocable living trust. In addition, based on the testimony of Dearfield, much of this research included review of the Debtor's parents' trust documents, a task that could have been delegated to a paraprofessional. Therefore, the court will reduce the allowable time for Entry 46 to 3.0 hours at a blended rate of $217.50, for a total of $652.50, reducing the allowable fees by $397.50.

C. Second Application

As with the First Application, the court has thoroughly reviewed Dearfield's itemized Second Application which mirrors concerns previously identified in the First Application regarding the reasonableness and appropriateness of certain billed entries. In the Second Application, Dearfield has requested allowable compensation in the amount of $3,687. Upon review, the court has detected multiple billing practices by Dearfield that are unreasonable, excessive, and impermissible. Notably, significant time was billed for duplicated efforts previously billed in Case No. 23-30280. Moreover, Dearfield improperly billed for time spent defending the fee application itself, a practice explicitly disallowed. These findings necessitate a careful reduction of allowable fees by $1,078.50, to ensure that the fees awarded are consistent with the principles discussed in *Boddy* (reducing the total allowable compensation for the Second Fee Application to $2,608.50). This reduction also recognizes, without a further deduction, the fact that the benefits achieved in this case were nonexistent for the bankruptcy estate and the delay of any foreclosure proceeding achieved for the Debtor personally, without at least confirmation of a

plan and some payment to creditors, was of minimal benefit to the Debtor and tenuous at best in supporting fees under § 330(a)(4)(B).

Once again, the court will commence its evaluation of the Second Application by examining the fees sought for general prepetition and preconfirmation services, totaling $3,183 for 13.8 hours incurred by Dearfield, with 5.8 hours spent by paralegal Julie Terry and 8.0 hours spent by Dearfield. Upon review, the court has identified issues with Dearfield's inefficient use of time, notably in the preparation and review of the Debtor's skeletal petition, schedules, and Chapter 13 plan. The court further notes that certain communications with the Debtor were administrative in nature and inappropriately billed at Dearfield's rate of $300. Additionally, the court finds some of the work concerning the review of certain liens and claims to be duplicative. As outlined below, the court reduces the allowable compensation for general prepetition and preconfirmation legal services provided in Case No. 23-30280 by $658.50, for a total of $2,524.50.

a. Preparation and Review of Skeletal Petition, Schedules, and Chapter 13 Plan (Time Entries 15, 16, & 20)

Like in the First Application, Dearfield billed an excessive amount of time to prepare and review the Debtor's skeletal petition. In this case, Dearfield spent 2.0 hours preparing and reviewing the skeletal petition for a total of $352.50, which included a review of the claims filed in Case No. 23-30280 and additional creditors (Doc. 27, Entries 15 & 16[15]). On October 6, 2023, Dearfield billed 1.5 hours ($202.50) at Ms. Terry's rate of $135 for "Preparation of petition-skeletal, including review of claims filed within prior filing and any additional creditors." Doc. 27, Entry 15. That same day, Dearfield billed 0.5 hours ($150) at Dearfield's rate of $300 for "Review/analyze/edit/execute skeletal filing." *Id.* at Entry 16.

[15] Docket references to the Second Application refer to Case No. 23-31636.

The court has reviewed the skeletal petition in Case No. 23-31636. Upon comparison to the skeletal petition in Case No. 23-30280, the filings are virtually identical. The court notes minor differences between the two filings, in that in the more recent petition, the Debtor lists Case No. 23-30280 as a prior bankruptcy filing and the certificate of service lists an additional six creditors. See No. 23-30280, Doc. 1; No. 23-31636, Doc. 1. The court does not find that this distinction warrants the requested fees. For the reasons previously discussed, the court will reduce allowable time for these services to 1.0 hours at a blended rate of $217.50, for a total of $217.50, reducing the allowable fees by $135.

Likewise, the court finds excessive the 2.5 hours ($337.50) billed at Ms. Terry's rate of $135 on October 18, 2023 for "continued preparation of schedules, SOFA and plan including tax liabilities, income, expenses, assets and debts." Doc. 27, Entry 20. Although the court appreciates efficiency exercised through the utilization of paralegals in the preparation of schedules and Chapter 13 plans, the court expects a reduction in time for the preparation of documents nearly identical to those prepared in Case No. 23-30280. As discussed, the court does note moderate changes in the Debtor's total assets, liabilities, and sources of income. See Doc. 12. However, the Debtor's proposed Chapter 13 plan in this case appears to be a duplicate of the amended plan filed in Case No. 23-30280, aside from a reduction in the monthly plan payments and the increase of the proposed sale price of the Property. See Doc. 13. As a result, the court will reduce the allowable time for Entry 20 to 1.5 hours at Terry's rate of $135, for a total of $202.50, reducing the allowable fees by $135.

b. Communications and Meetings with the Debtor (Time Entries 2, 3, 6, 7, 8, 9, 11, 12, 21, 22, 35, 38, & 39)

In the Debtor's second case, Dearfield spent 3.8 hours either communicating with the Debtor or in meetings with the Debtor, for a total of $1,041 (Doc. 27, Entries 2, 3, 6, 7, 8, 9, 11,

12, 21, 22, 35, 38, & 39). Dearfield billed 1.1 hours for a total of $313.50 for telephone calls with the Debtor (Doc. 27, Entries 6, 7, 21, 35, & 38). Given the dismissal of Case No. 23-30280, the court finds discussions between counsel and the Debtor related to chapter choice and the foreclosure proceeding (Entries 6 & 7) to be appropriate. However, the entry from October 18, 2023, in which Dearfield billed 0.2 hours ($60) at Dearfield's rate of $300 for "Telephone calls to Debtor regarding schedules, SOFA and plan," lacks sufficient detail to allow the court to determine the appropriate billing rate for the calls. Doc. 27, Entry 21. Notwithstanding the lumped nature of the entry, the court is unable to determine whether these calls are more appropriately categorized as administrative, particularly as Ms. Terry was preparing the documents referenced in the description that same day. Therefore, the court will allow the time for Entry 21 at a blended rate of $217.50, for a total of $43.50, reducing the allowable fees by $16.50. The court further finds Entries 35 and 38 for voicemails as inappropriately billed at Dearfield's rate of $300. *Id.* at Entries 35 and 38. As with a similar entry identified in the First Application, the court will allow the time for Entries 35 and 38 at an administrative rate of $135, reducing the allowable fees by $33.

Dearfield billed 1.1 hours for a total of $264 for text message and email communications with the Debtor (Doc. 27, Entries 2, 3, 8, 9, 11, & 12). Again, the court finds some of these billed entries to be excessive. On September 9, 2023, Dearfield billed 0.4 ($120) at Dearfield's rate of $300 for "Text to Debtor regarding tax return compliance for filing chapter 7 vs chapter 13." Doc. 27, Entry 3. The court does not find 0.4 hours of time reasonable to prepare a single text to the Debtor explaining the tax return requirements for Chapter 7 and Chapter 13 proceedings. The court will reduce the allowable time for this entry to 0.2, reducing the allowable fees by $60. The court also finds the email exchange on October 6, 2023 between counsel and the Debtor for a total of 0.2 hours ($60) regarding Dearfield's contact with Fifth Third inappropriately billed at Dearfield's

rate of $300. *Id.* at Entries 11 and 12. Based on the descriptions, Dearfield billed $60 for informing the Debtor that he spoke with Fifth Third's counsel and the Debtor's receipt of that email. The court finds this time to be administrative; thus, the court will allow the time for Entries 11 and 12 at an administrative rate of $135, reducing the allowable fees by $33.

c. Analysis of Liens and Claims in Case No. 23-30280 (Time Entry 14)

The court takes issue with an entry from October 6, 2023, in which Dearfield billed 1.4 hours ($420) for "[a]nalyz[ing] judicial report with liens and IRS claim/lien filed in previous case for preparation of filing of new chapter 13 case." Doc. 27, Entry 14. These liens and claims had previously been made known in Case No. 23-30280, which was dismissed mere months prior. The record clearly reflects that during the Debtor's prior case, multiple objections to confirmation of the Debtor's Chapter 13 plans directly involved the claims and objections by Cole, Fifth Third, and the IRS. See No. 23-30280, Docs. 22, 24, 35, & 40. Dearfield previously billed for reviewing these various objections. See No. 23-30280, Doc. 49, Entries 30, 32, 55, & 61. Moreso, the objection to confirmation by the IRS specifically referenced its total claim for $257,672.34, of which $79,846.57 was listed as secured, $57,509.02 was listed as an unsecured priority claim under § 507(a)(8), and $120,316.75 was listed as an unsecured general claim. *Id.* at Doc. 40. To the extent the description for Entry 14 refers to the Union Savings Bank judgment lien, Dearfield previously billed 3.2 hours for research and review of documents related to the Union Savings Bank judgment lien. See No. 23-30280, Doc. 49, Entries 4, 12, 14, & 16. As such, Dearfield was, or should have been, thoroughly familiar with the details of these liens and claims. Given this familiarity, the court finds the reevaluation of these previously reviewed liens and claims both excessive and duplicative. Accordingly, the court will reduce the allowable time for Entry 14 to 0.8 hours at a blended rate of $217.50, reducing the allowable fees by $246.

d. Length of Time Related to Preparation and Review of Second Fee Application

The court is perplexed by the amount time Dearfield spent preparing and reviewing and preparing the Fee Application for the second case.[16] The time analysis attached to the Second Application specified that Dearfield spent 2.5 hours in preparing the Second Application for $337.50 (Doc. 27, Entry 44) and 1.0 hours in reviewing and editing the Second Application for $300 (Doc. 27, Entry 45), for a total amount of $637.50. Based upon the court's review of the Second Application and consideration of Dearfield's statements in support of the Applications, the court finds that a significant portion of the fees sought by Dearfield for Entries 44 and 45 of the Second Application are not compensable.

A bankruptcy court may award compensation for the preparation of a fee application "based on the level and skill *reasonably required* to prepare the application." 11 U.S.C. § 330(a)(6) (emphasis added). "Professionals seeking compensation in bankruptcy are subject to more stringent disclosure requirements than attorneys outside of bankruptcy." *In re Rose*, 561 B.R. 70, 78 (Bankr. W.D. Mich. 2016) (citing *In re Stanton*, 559 B.R. 781 (Bankr. M.D. Fla. 2016)). However, "an attorney may not bill time for the sake of billing time." *In re Andresiak*, 578 B.R. 624, 626 (Bankr. W.D. Mich. 2017) (citing *Rose*, 561 B.R. at 79 ("[A] professional cannot bill time for billing time.")

Historically, fees for the preparation of fee applications were limited to 5% of the total fees requested, absent exceptional circumstances. *In re Bass*, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998) (citing *Coulter v. State of Tenn.*, 805 F.2d 146, 151 (6th Cir. 1986), abrogated by *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720 (6th Cir. 2016)). Although the amount of time "reasonably required" in preparing a fee application can vary depending on the level and

[16] There was no time billed related to preparing the First Application in the Debtor's first case.

skills of counsel, the time spent preparing a fee application should generally not exceed one hour of time. *Rose*, 561 B.R. at 79 (citing *In re Acevedo*, No. DG 12-06576, 2014 Bankr. LEXIS 4949, at *9, 2014 WL 6775272, at *3 (Bankr. W.D. Mich. Nov. 24, 2014) ("Although a paralegal professional might have been a more efficient choice for preparing a fee application given the skills required, the court generally allows not more than one hour's worth of attorney time."); *In re Hirsch*, 550 B.R. 126, 143 (Bankr. W.D. Mich. 2016) (finding that 0.7 hours of time apportioned between attorney and paralegal for preparation of a fee application appropriate)).

In *Andresiak*, the court declined to apply a fixed percentage and, instead, found that the court should "consider a range of time for preparation of fee applications, depending on the complexity of the case, the need for detail in the text of the application, and the total amount of fess sought in the particular application, among other things." 578 B.R. at 626 (citing *Boddy*, 950 F.2d 334 (6th Cir. 1991)). In that case, counsel for the debtor sought $220 for one hour of time spent preparing a fee application. 578 B.R. at 626. The court found that counsel did not apportion the time between an attorney and paralegal and that the application was a form that counsel frequently used for fee applications. *Id.* at 626-27. The court held that "it was unreasonable for the Applicant to bill one hour of attorney time preparing the application[,]" reducing the compensation sought by 50%. *Id.* at 627.

The court has carefully considered Dearfield's explanation regarding the 3.5 hours spent on preparing the Second Application. When questioned, Dearfield asserted that although he typically does not bill for such tasks, he alluded to deeming it necessary in this instance due to the anticipation of appearing before the court to litigate the fee application. Tr. at 19 ("[W]hat would you do if you were in my shoes, knowing you've got Judge Humphrey this is going to go in front of?"). Dearfield expounded upon his record-keeping process, wherein he maintains

contemporaneous handwritten notes that are later transcribed by his staff, as his firm does not utilize a billing software. *Id.* at 19-20. Dearfield explained that the record-keeping process requires "concentration," particularly in light of his anticipated defense of the Second Application before the court. *Id.* at 21-22 ("You know, again, I know I'm going in front of [Judge Humphrey].").

The court has also thoroughly weighed Dearfield's explanation regarding the breakdown of the 3.5 hours allocated for preparing the Second Application. Dearfield revealed a process through which his paralegal drafts a rough version based on his handwritten notes, which are only transcribed into a Word document after he decides whether to opt out of the no-look fee. *Id.* at 23-24. Notably, the paralegal dedicated 2.5 hours to preparing the rough draft, with Dearfield asserting that this time was not solely spent on transcription but also included auditing, contemplation, and revision of the time entries regarding the services rendered. *Id.* at 25-26.[17] Regarding the necessity of such contemplation for itemization, Dearfield's explanation remained vague, again emphasizing the need to "think" about the time entries due to an anticipated defense of the fee application. *Id.*

[17] If counsel in Chapter 13 cases itemize their time and seek payment of attorney fees based upon such itemizations, serious consideration should be given to investing in at least a simple, cost-effective billing software. Maintaining time records and assembling and printing fee bills should not involve a difficult or time-consuming process. The first step is to contemporaneously record the time for each task conducted for each client matter, recording the client and matter for which the work was done, who did the work, a brief description of the task, and the amount of time taken in performing the task. Those individual time entries should be made on separate documents or maintained in a space and format separate from client notes and other client materials. Office staff or attorneys should not need to rummage through attorney client notes to find references to time spent on a matter. Those time entries can then be automatically (through software) or manually assembled chronologically together to create the bill for the client matter, totaling the amount of time for each person on the matter and applying the respective billing rates for each attorney or paraprofessional who performed work on the matter. If billing software is not used, staff or attorney time spent in putting together the draft bills is not compensable time. Once an initial draft bill is prepared from all of the time entries, then counsel should review the draft bill to account for any duplicative, excessive, or other time that is not otherwise appropriate to bill to the client. Any such time that should not be billed can either be eliminated or reflected as not charged. Thus, the only serious thought that needs to be involved in preparing a fee application is the review of the draft bill to identify any time entries that should not be billed or which should be reduced. The finalized bill can be attached to a simple application filed with the court requesting approval of the fees and expenses itemized in the attached itemization. For small amounts, the fee itemizations and a very brief explanation of the services provided and results obtained should be sufficient for the court to determine the appropriateness and reasonableness of the fees and expenses sought. If the fees sought are significant in amount, breakdowns of the fees by attorney and paraprofessionals and categories of services provided are helpful.

at 25 ("[T]wo hours can go by very quickly, if you're thinking about having to stand here in front of Judge Humphrey.").

Despite Dearfield's assertions, the court finds his explanation insufficient to justify the hours billed for fee application preparation. The court deems the allocation of 3.5 hours for this task not only excessive, particularly considering the lack of concrete justification provided, but also non-compensable as Dearfield explanations clearly establish inefficient and duplicative office practices. Essentially, Dearfield's process of having a paralegal type up his handwritten notes results in Dearfield charging his client and the estate for keeping track of his time, which is non-compensable overhead. See *Rose*, 561 B.R. at 79 (holding that counsel was not entitled for reviewing previously recorded time entries as counsel was "billing time for billing time"); *Acevedo*, 2014 Bankr. LEXIS 4949, at *8, 2014 WL 6775272, at *3 (finding that a time entry which includes "writ[ing] up time" is non-compensable overhead).

Furthermore, Dearfield repeatedly indicated that the excessive time spent on preparing the Second Application was due to his anticipation of having to appear before the court, which the court construes as non-compensable and in violation of the United States Supreme Court's decision in *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015). In *Baker Botts*, the Court began by examining the American Rule, which provides that "[e]ach litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Id.* at 126. In reconciling § 330(a)(1) and the American Rule in the context of a Chapter 11 proceeding, the Court found that the phrase "reasonable compensation for actual, necessary services rendered" does not authorize courts to shift the costs of adversarial litigation from the debtor's attorney to the administrator of the estate. *Id.* at 128. The Court held that "[a] §327(a) professional's preparation of a fee application is best

understood as a 'servic[e] rendered' to the estate administrator under §330(a)(1), whereas a professional's defense of that application is not." 576 U.S. at 132. In other words,

> [I]t would be natural to describe a car mechanic's preparation of an itemized bill as part of his "services" to the customer because it allows a customer to understand—and, if necessary, dispute—his expenses. But it would be less natural to describe a subsequent court battle over the bill as part of the "services rendered" to the customer.

Id. In conclusion, the Court held: "Section 330(a)(1) itself does not authorize the award of fees for defending a fee application, and that is the end of the matter." *Id.* at 135. The *Baker Botts* decision applies to Chapter 13 proceedings. See *Rose*, 561 B.R. at 75; see also *In re Jerrell*, No. 21-30680, 2023 Bankr. LEXIS 1126, at *10, 2023 WL 3101860, at *3 (Bankr. W.D.N.C. Apr. 26, 2023) ("there is no meaningful difference between the language under consideration in *Baker Botts* ('reasonable compensation for actual, necessary services rendered,' § 330(a)(1)(A)), and the language applicable to Chapter 13 debtor's attorneys ("reasonable compensation . . . based on a consideration of the benefit and necessity of such services," § 330(a)(4)(B))).

While § 330(a)(6) generally authorizes the court to allow compensation for reasonable fees and expenses incurred during the preparation of a fee application, the court finds that a significant portion of the time billed by Dearfield was not for preparation per se, but rather in anticipation of defending the Second Application itself. It is well-established that time spent defending a fee application is non-compensable. The distinction between billing for the preparation of a fee application and billing for the defense of a fee application is not merely a matter of semantics, but is fundamental to the principles guiding compensable legal work under § 330(a). Consequently, the court cannot allow Dearfield compensation for activities that, upon scrutiny, extend beyond the scope of permissible fee application preparation and veer into the realm of fee application defense.

The other factor which must be considered in reviewing the time billed on the Second Application for preparing the Application is the amount sought and the short-lived span of the second case. That case did not make it beyond the creditors' meeting because the Debtor never appeared for the creditors' meeting and never commenced making payments to the Chapter 13 Trustee. The fees sought are $3,687 which, for the reasons discussed, are high. A fee application for such a limited representation need not and should not be an extensive or laborious matter. Accordingly, the court will allow 1.0 hour at a blended rate of $217.50, reducing the total allowed fees by $420.

D. The Relationship Between the Debtor's Noncompliance with the Requirements of 11 U.S.C. § 1308 and the Applications

As a final matter, the court will address the issues arising out of the Debtor's failure to file his prepetition tax returns and his noncompliance with 11 U.S.C. § 1308 with respect to the Applications. The issues presented themselves to the court as a result of the court's concern as to whether any attorney fees incurred after the scheduled meeting of creditors should be allowed when the prepetition tax returns were not filed with the appropriate taxing authorities prior to the meeting.

Section 1325(a)(9) of the Bankruptcy Code requires that "all applicable Federal, State, and local tax returns as required by section 1308" be filed as a prerequisite to confirmation of a Chapter 13 plan. Section 1308(a) provides that:

> Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

However, there are two very limited exceptions provided by § 1308(b) to this requirement to file the tax returns prior to the creditors' meeting with respect to tax returns that were past due as of the petition date. Thus, § 1308(b) provides in pertinent part:

> (1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—
>
> (A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting …
>
> * * *
>
> (2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under paragraph (1), if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under paragraph (1) is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under paragraph (1) for—
>
> (A) a period of not more than 30 days for returns described in paragraph (1)(A) …

11 U.S.C. § 1308(b).

Accordingly, pursuant to § 1308(a), a debtor must file not later than the day before the date the § 341 meeting of creditors is first scheduled "all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a). "The express requirement that debtors file prior tax returns was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), and appears or is incorporated in numerous sections of the Bankruptcy Code." *In re Kuhar*, 391 B.R. 733, 735-36 (Bankr. E.D. Pa. 2008); see 11 U.S.C. §§ 521(e)-(g), 521(j), 1307(e), 1308, 1325(a)(9); see also *In re Perry*, 389 B.R. 62, 65 (Bankr. N.D. Ohio 2008). "One of the central purposes of BAPCPA's tax return

requirement is to help states identify potential claims in bankruptcy cases where they may be owed delinquent taxes." *Kuhar*, 391 B.R. at 737 (citing H.R. Rep. 108-40, pt. 1 at 154 (Mar. 18, 2003); Lawrence P. King, 8 Collier on Bankruptcy ¶ 1308.02 (15th ed. Supp. 2007) (noting that primary purpose of § 1308 is "to give taxing authorities the information they need in order to file proofs of claim") (cleaned up)). "This section of BAPCPA expresses the Congressional intent that it is important to demand that debtors file returns to assist state revenue agencies to determine whether they had claims against the debtor and to punish those debtors who were delinquent in filing tax returns by withholding the benefits of Chapter 13." *Perry*, 389 B.R. at 65 (cleaned up).

Section 502(b)(9) and Bankruptcy Rule 3002(c)(1) require government claims to be filed within 180 days following the petition date. 391 B.R. at 737; see also 11 U.S.C. § 502(b)(9)(A); Fed. R. Bankr. P. 3002(c)(1). Unless a debtor has filed the required tax returns, "a meaningful proof of claim cannot be prepared." *Kuhar*, 391 B.R. at 737. "[I]n a Chapter 13 case, where returns have not been filed, the government's bar date is 60 days after a tax return is filed under § 1308." *Id.* at 737-38 (cleaned up); see also 11 U.S.C. § 502(b)(9)(B). In explaining the importance of compliance with § 1308, the *Kuhar* decision provides:

> Since the permissible time for filing of returns under § 1308 is keyed to the status of the § 341 meeting, there must be an unambiguous docket entry or some other means of determining whether that 60 day period has begun to run. Moreover, there must be a way of readily determining if the debtor is in compliance with § 1308 if the dismissal remedy provided to taxing authorities as parties in interest under § 1307(e) is to have meaning.

391 B.R. at 738. The failure to timely file the tax returns is grounds for dismissal under § 1307(e), which states:

> Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

11 U.S.C. § 1307(e). Dismissal or conversion under § 1308(e) is mandatory. *Perry*, 389 B.R. at 66 ("Absent facts supportive of equitable relief, this Court must enforce § 1307(e) as written.").

"Irrespective of the date when the tax returns were due to be filed, § 1308(a) states that the same must be filed on or before the date of the § 341 meeting." *United States v. Cushing* (*In re Cushing*), 401 B.R. 528, 537 (B.A.P. 1st Cir. 2009). Section 1308(b)(1) allows the trustee discretion to "hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns" as the date of the § 341 meeting may come before the date the filing of the tax returns is due. 11 U.S.C. § 1308(b)(1); *Cushing*, 401 B.R. at 537. The trustee's discretion is limited to 120 days after the date of that meeting of creditors for any return that is past due. 11 U.S.C. § 1308(b)(1)(A). For any return that is not past due, the trustee's discretion is limited to the later of "120 days after the date of that meeting" of creditors, or the date on which the return is due, under the applicable tax law, for an automatic extension or the last extension timely requested. 11 U.S.C. § 1308(b)(1)(B). However, "[i]f the trustee opts to hold open the meeting of creditors pursuant to § 1308, a clear statement must be made for the record." *Cushing*, 401 B.R. at 538. "[A] docket empty of an indication of the status regarding the deadline for filing tax returns would impede the ability of the court and parties to determine a debtor's compliance with 11 U.S.C. § 1308 and whether confirmation would be permissible under 11 U.S.C. § 1325(a)(9)." *Id.* at 537.

In *Kuhar*, the court determined that because the creditor's meeting had concluded, the trustee could not grant an extension under § 1308(b)(1)(A). 391 B.R. at 738. However, the record reflected that the trustee had implicitly granted an extension by agreeing to continuances of the trustee's dismissal motion. *Id.* The court reasoned that trustee would not have agreed to a continuance unless the trustee was willing to accept the returns out of time. *Id.* In that case, the

trustee filed a motion to dismiss on February 19, 2007, alleging that the debtor had failed to file the requisite tax returns for 2001 through 2006 and that the proposed Chapter 13 plan was not feasible. *Id.* at 734-35. The trustee's motion to dismiss was scheduled for March 27, 2008 but was subsequently continued to April 8, 2008. *Id.* at 735. At the April 8, 2008 hearing, the trustee informed the court that the tax returns had not been filed; however, the parties agreed to a continuance of the contested issues until May 6, 2008. *Id.* On May 6, 2008, the debtor informed the trustee that she had filed all of the required tax returns, but that she did not have paper copies due to computer difficulties. *Id.* The May 6, 2008 hearing was continued to May 28, 2008, without appearance or consultation with the court. *Id.*

The court concluded that "[e]ven if the [t]rustee's continuances can be construed as the functional equivalent of keeping the meeting open, it is clear that the [t]rustee did not grant the [d]ebtor leave to file the missing returns after May 6." *Id.* at 739. Because the debtor had misrepresented to the trustee's counsel that she had electronically filed the returns by the May 6 date, the trustee would have no reason to provide an extension for the debtor to file her returns. *Id.* As such, the "[t]rustee's non-statutory concessions terminated on May 6 at which time any constructive meeting in no sense could be viewed to have been held open." *Id.* Based upon the debtor's failure to comply with § 1308, the court determined that it must dismiss the debtor's case after determining that dismissal was in the best interest of the estate. *Id.*

"Under certain circumstances, if the trustee has extended the tax return filing deadline, the Court may intervene and extend the deadline further." *In re Dean*, No. 19-30112-kmp, 2020 Bankr. LEXIS 3099, at *6 (Bankr. E.D. Wis. Feb. 10, 2020); see also *Kuhar*, 391 B.R. at 737 n.7. Section 1308(b)(2) provides:

> After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a

> preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor[.]

11 U.S.C. § 1308(b)(2). This court-ordered extension, which is limited to an additional 30 days, is only available when the following conditions are met:

> (1) the extension is granted after notice and a hearing; (2) the order extending the filing deadline for the past-due tax returns is entered before the tolling of any applicable filing period; and (3) the debtor shows by a preponderance of the evidence that the failure to file the returns is attributable to circumstances beyond the control of the debtor.

Dean, 2020 Bankr. LEXIS 3099, at *7; see also *Kuhar*, 391 B.R. at 737 n.7 (citing *In re McCluney*, No. 06-21175, 2007 Bankr. LEXIS 2088, at *15, 2007 WL 2219112, at *5 (Bankr. D. Kan. June 22, 2007)). For a debtor to benefit from this court-ordered extension, a debtor must file a motion seeking such an extension before the expiration of the trustee's 120-day deadline and before the conclusion of the 341 meeting of creditors. *Dean*, 2020 Bankr. LEXIS 3099, at *11-12.

In this case, the creditors' meeting was first scheduled for April 11, 2023, and the Debtor did not file his tax returns prior to that time and, therefore, an issue existed as to whether his counsel should be awarded attorney fees for any time after the creditors' meeting. However, as noted, the Trustee, Debtor, Internal Revenue Service, and Cole all agreed through an agreed order to provide the Debtor until July 31, 2023 to file his tax returns (No. 23-30280, Doc. 45). Thus, an issue exists as to whether the agreed order extending the deadline for the Debtor file the required tax returns to July 31, 2023 effectively extended the filing period beyond April 11, 2023, the date of the § 341 meeting.

Whether the Trustee had the authority to allow up to an additional 120 days for the Debtor to file his tax returns depends upon whether the meeting of creditors was "held open." In this case, the Trustee prepared a docket entry expressly stating that the meeting of creditors was held on April 11, 2023. The record is devoid of any clear statement that the meeting was "held open."

Therefore, the Trustee could not grant any extension under § 1308(b)(1)(A). See *Kuhar*, 391 B.R. at 738.

In comparing Case No. 23-30280 to the decision in *Kuhar*, the court notes a subtle parallel in the actions of the trustees regarding the management of the meetings of creditors. In both instances, the trustees did not formally "hold open" the meeting of creditors on the docket, which would require some explicit continuation of the meeting's proceedings to a later date. In *Kuhar*, the court interpreted the trustee's agreement to postpone the hearing on the motion to dismiss as an implicit action to "hold open" the meeting. 391 B.R. at 738. Similarly, here, the Trustee's consent to permit the Debtor to submit the required tax returns by a specific date (July 31, 2023) can be construed as an informal, but operative, measure to "hold open" the meeting of creditors. Although there was no formal announcement or docket entry to this effect, the court is not inclined to disturb any prior order or retrack any prior consent to such actions on behalf of the court. See No. 23-30280, Doc. 45. Accordingly, the court concludes that, subject to the other issues raised and addressed in this decision, any attorney fees in the first case, Case No. 23-30280, through July 31, 2023 would be appropriate regardless of the requirements of § 1308 regarding the filing of tax returns.

Nevertheless, the court perceives the current situation as an opportunity to instruct on the proper application of § 1308 henceforth. The court will not permit the Trustee to implicitly "hold open" the meeting of creditors. Instead, the reviewed precedent dictates a need for transparency and procedural clarity in the Trustee's future administrative actions. To properly exercise the discretionary authority extended to Chapter 13 trustees under § 1308(b)(1), the Trustee must explicitly record on the docket that the meeting of creditors is being "held open," along with the rescheduled date to which it is continued, not to be beyond 120 days after the first scheduled § 341

meeting. For example, such a docket entry could state: "Meeting of Creditors Held Open and Continued to *mm-dd-yyyy*." This formal documentation serves a vital purpose in that it provides the government with a definitive timeline to file their proofs of claim and, alternatively, it allows the government to seek the dismissal remedy provided to taxing authorities as parties in interest under § 1307(e). Lack of such clear indication on the docket risks ambiguity that could potentially disadvantage creditors. As the fiduciary responsible for balancing the interests of all parties within a Chapter 13 proceeding, the Trustee is mandated under § 1308(b)(1) to unambiguously communicate the status of the meeting of creditors.

VII. Conclusion

Consistent with this court's decisions in *Spear* and *Pochron*, as well as the principles established and discussed in *Boddy* and *Village Apothecary*, and based on the Applications, filings by counsel and the Chapter 13 Trustee, the March 7, 2024 hearing, the evidence introduced at that hearing, and the statements of G. Timothy Dearfield, and for the reasons set forth above, the court allows fees in favor of Dearfield in the following amounts: (1) $5,844 for services rendered in connection with the First Application and (2) $2,608.50 for services rendered in connection with the Second Application.

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