

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
MEGAN J. BIGGS,) Case No. 20-11716
)
Debtor.)

ORDER GRANTING MOTION TO CLARIFY

This case is before the court on the debtor’s “motion to clarify” (doc. 46) the court’s oral order at confirmation overruling the chapter 13 trustee’s objection to confirmation on the condition that the debtor’s counsel’s “no look” fee be reduced \$300 from \$4,000 to \$3,700. The court treats the motion as a motion to amend or make additional findings under Federal Rule of Civil Procedure 52(b), as incorporated by Federal Rule of Bankruptcy Procedure 7052, and grants the motion to the extent set out below.¹

Like many districts, this court allows a “no look” attorney’s fee in chapter 13 cases. *See, e.g., In re Villaverde*, No. 11-37442-BKC-LMI, 2016 WL 1179343, at *1 (Bankr. S.D. Fla. 2016); *In re McDonald*, No. 09-10284, 2011 WL 12885454, at *1 (Bankr. S.D. Ga. Mar. 8, 2011). “A no look fee is a flat fee, usually adopted within a district by local rule or guideline” *See In re Dellutri Law Grp.*, 482 B.R. 642, 650 (Bankr. M.D. Fla. 2012). It “is a presumptively reasonable fee based on local hourly rates, and the general amount of work required by a typical chapter 13 case.” *See In re Villaverde*, 2016 WL 1179343, at *1. “These cases are fairly standard and therefore susceptible to a flat rate because much of the work is routine and capable of performance by paralegals.” *Id.*

¹ Federal Rule of Bankruptcy Procedure 9014(c) provides that Rule 7052 applies in contested matters.

The no look fee “permits counsel in a [c]hapter 13 case to receive a specific fee for a defined bundle of services without the requisite necessity of: (1) maintaining contemporaneous hourly time records; and (2) filing a fee application and giving notice under § 330 of the Bankruptcy Code” and the applicable Bankruptcy Rules. *See In re Dellutri Law Grp.*, 482 B.R. at 650-51. “The ‘no-look’ fee promotes judicial efficiency and flexibility in handling the volume of [c]hapter 13 cases managed by the courts.” *See In re Becker*, 469 B.R. 121, 124 (Bankr. M.D. Fla. 2012).

The court has a duty to regulate and set debtor’s attorney’s fees under Bankruptcy Code §§ 327-329. A chapter 13 debtor’s lack of sophistication and usually desperate situation make it difficult for him or her to shop around or negotiate for attorney’s fees. And where, as here and in most chapter 13 cases, the debtor is paying less than 100% to unsecured creditors under the plan, every dollar paid to debtor’s counsel is a dollar less for unsecured creditors.

The use of a “no look” fee has advantages for all parties. In a normal, non-pandemic year, this court usually has about 3,000 new chapter 13 cases filed every year and about 10,000 chapter 13 cases pending at any given time. The use of a “no look” fee prevents the development of a cottage industry of filing and ruling on fee applications. It provides certainty to debtors as to the amount that they will pay and to the attorney as to the amount that he or she should receive. It allows the chapter 13 trustee to calculate plan payments knowing what the fee will usually be without the need to constantly adjust the payment to account for additional fees. It allows unsecured creditors to know what percentage they will be receiving on their claims, since any amount paid as attorney’s fees usually reduces the amount paid to unsecured creditors. The court thus declines the debtor’s invitation to adopt an a` la carte method of awarding fees in chapter 13.

This court has entered local Administrative Order (“AO”) No. 2020-12 regarding chapter 13 “no look” fees. It provides that the “no look” fee will be the lesser of \$4,000 or the amount proposed to be paid to creditors, with a floor of \$2,400 unless the court finds that the case is filed under chapter 13 primarily to finance attorney’s fees.²

ORDER REGARDING CHAPTER 13 ATTORNEY’S FEES

In chapter 13 cases filed after May 31, 2017, the “no look” compensation for the debtor’s counsel in confirmed cases shall not exceed the lesser of \$4,000 or the amount proposed to be paid (including trustee’s commission) to creditors through the plan, with a floor of \$2,400 unless the court finds that the case was filed under chapter 13 primarily to finance attorney’s fees. The “no look” compensation in chapter 13 cases dismissed prior to confirmation shall not exceed \$1,000. In addition, the court will generally allow a “no look” fee of \$500 or 10% of the net settlement (whichever is less) to the debtor’s counsel for substantial legal work associated with approval of tort claims and of \$500 for substantial legal work associated with sale of the debtor’s real property. When practicable, the court will order that these add-on fees be paid from the settlement proceeds or real estate sale proceeds rather than through the plan. No other fees or costs shall be paid to the debtor’s counsel without prior court approval except costs related to the filing of a petition. Said costs shall be disclosed in the petition and are subject to review by the court.

The debtor’s counsel shall obtain the signature of the debtor on all initial fee applications in chapter 13 proceedings and shall indicate the amount of the fee and the method of payment. Any retained fee collected by an attorney prior to the filing of the chapter 13 petition shall be disclosed in the fee petition and the retainer shall be deducted from the fee awarded by the court. The fee petition shall further disclose any fees and expenses charged or collected for any prepetition legal work performed by the counsel for the debtor within 1 year prior to filing bankruptcy. Unless said prepetition legal work is clearly delineated as unrelated to the chapter 13, the chapter 13 trustee shall deduct any such disclosed prepetition fees and expenses from the fees awarded in chapter 13. Although up to \$3,000 of the “no look” attorney’s fees shall be due and payable in full at the date of confirmation, payment of attorney’s fees shall be made in accordance with the plan and to the extent funds are available. After payment of the initial \$3,000, the remaining amount of the “no look” fee will be paid at \$50 a month at the

² The prior version, AO No. 2019-3, was the same except that it did not contain the last portion of the first sentence about cases filed under chapter 13 primarily to finance attorney’s fees, which was added to make the order consistent with this court’s opinion in *In re Powe*, No. 20-10054, 2020 WL 6065178 (Bankr. S.D. Ala. May 1, 2020). All administrative orders are available on the court’s website.

secured Bankruptcy Code § 1325 level as funds are available. Any add-on fees being paid through the plan shall be treated as administrative expense claims.

This order supersedes Administrative Order No. 2019-3, which is hereby rescinded.

The “no look” fee means that the debtor’s counsel does not have to separately move for an award of attorney’s fees under Bankruptcy Code § 330, although counsel can do so. In fact, this court recently awarded chapter 13 attorney’s fees of over \$10,000 in a very complicated chapter 13 which has already involved the sale of multiple properties; debtor’s counsel then provided detailed time records to support the request for additional fees. *See generally In re Travis*, No. 20-20013. However, the court intends for the “no look” fee to cover attorney’s fees in a normal chapter 13. The court realizes and expects that the debtor’s counsel will overrealize on easy or smooth-sailing chapter 13 cases and underrealize on problematic cases which require more work and attention.

The provision in AO 2020-12 limiting the “no look” fee to some extent is designed to keep the attorney’s fees in small chapter 13 cases from exceeding the amount being paid to creditors. It is also intended to reduce the financial incentive for attorneys to put their clients in chapter 13 to obtain a larger fee than would normally be paid in a chapter 7 case, as discussed at length in this court’s *Powe* opinion. After all, the bankruptcy system is designed for the benefit of debtors and creditors – not attorneys. And although the rule not allowing the “no look” fee to be more than the amount paid to creditors is somewhat mechanical, it provides a yardstick which is helpful to both the court and practicing attorneys. Of course, AO 2020-12 sets only a “no look” fee – debtor’s counsel can always request additional fees under the appropriate circumstances, which the court will consider under the standards in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

Debtor's counsel objects to the court's reduction of his "no look" fee from \$4,000 to \$3,700 pursuant to AO 2020-12. The debtor's income here is below median and thus she qualifies for a 36 month plan under Bankruptcy Code § 1325(b)(4). Her net monthly income according to her schedule J is \$225, which she proposes to pay toward the plan for the minimum required 36 months. In the usual case, much of a chapter 13 attorney's work involves dealing with secured and priority claims: negotiating the value of the collateral and the secured claim's treatment under the plan, objecting to claims which are not secured or fully secured, or moving to avoid judgment liens or liens on household goods. That is not the case here. The debtor only has unsecured debt. At the confirmation hearing, the chapter 13 trustee requested that the fee be reduced to \$1,500 pursuant to *Powe*, but the court found that the case was not filed as a chapter 13 primarily to finance attorney's fees because the debtor was not eligible for a chapter 7 discharge. The trustee informed the court and the debtor's attorney that a reduction in the "no look" fee to \$3,700 would make the projected plan distribution to creditors \$3,700 as well. The court thus set the "no look" fee at \$3,700.

Debtor's counsel here has not alleged or shown any reason to vary from Administrative Order No. 2020-12. If he or the trustee wishes to do so, the court will consider the request and will conduct an evidentiary hearing if necessary.

Dated: January 19, 2021


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE