

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Jane Young Metts,

Debtor(s).

C/A No. 21-01506-HB

Chapter 13

**ORDER ON APPLICATION FOR
COMPENSATION**

THIS MATTER is before the Court on the Amended Application for Compensation filed by Benjamin Laurence Dean, counsel for Debtor Jane Young Metts, on behalf of Time Capsule Estate Planning, LLC.¹ The Chapter 13 Trustee filed a Response² and a hearing was held on June 9, 2022.

FACTS

Dean began working on the probate case of Metts' late husband in 2019 and developed a professional relationship. After creditor First Reliance Bank sought to foreclose, she and Dean explored bankruptcy. Although Dean disclosed he had no prior bankruptcy experience, Metts wanted him to represent her because of his existing representation. Dean stated Metts is not financially sophisticated and has some difficulty trusting others.

On April 16, 2021, Metts and Dean executed a retainer agreement whereby Dean agreed to provide advice regarding "debt issues and relief from debt, including the possibility of filing bankruptcy under the federal Bankruptcy Code . . . filing, preparation of documents, filing of documents, and other services normally required in a bankruptcy proceeding." The retainer agreement provides hourly rates of \$150.00 for Dean and \$75.00 for his paralegal and that Metts "understand[s] that it will likely be paid out of liquidating property in the estate."

¹ ECF No. 82, filed May 8, 2022.

² ECF No. 87, filed May 31, 2022.

On June 2, 2021, Dean filed a petition for Chapter 13 relief on behalf of Metts. During the pendency of this case, the Trustee filed a Motion to Dismiss for failure to provide and/or file certain documents and a Petition to Dismiss because the proposed plan was not confirmable,³ to which Metts objected.⁴ First Reliance also objected to confirmation.⁵ Shortly thereafter, the Trustee met with Dean to guide him on proper procedures for filing schedules, statements, and a confirmable plan. Despite this, there were several filings submitted by Dean throughout the bankruptcy that did not comply with the Court's rules and procedures. The deficiencies were eventually rectified after several attempts by Dean and/or were not addressed until brought to his attention by the Court. For example, prior to the initial confirmation hearing, Dean filed three modified plans and several notices of hearing to correct errors.⁶ Such errors appear to have increased the fees sought. First Reliance again objected and hearings to consider confirmation and the Trustee's Petition to Dismiss were held on August 19, 2021.⁷ These hearings required a Joint Statement of Dispute and counsel for the Trustee characterized them as "lengthy."

The matters were continued several times to November 10, 2021, at which time the Trustee withdrew the dismissal request and confirmation was denied. Dean subsequently filed a modified plan on November 17, 2021, providing payment of 100% of general unsecured claims and paying First Reliance's claims in full from sale proceeds of various real properties securing its mortgage interests.⁸ First Reliance consented to the plan, and it was confirmed on December 28, 2021.

³ ECF No. 30, filed June 14, 2021.

⁴ ECF No. 31, filed June 14, 2021.

⁵ ECF No. 33, filed June 30, 2021.

⁶ See ECF Nos. 36-40, 44-45.

⁷ Those hearings were presided by the Hon. John E. Waites. This case was reassigned to the undersigned judge on June 2, 2022.

⁸ ECF No. 70.

On June 6, 2022, the Court approved Metts' Motion to Sell the parcels of real property referenced in the confirmed plan through a passive notice procedure that required no hearing.⁹ The Motion proposed to use the sale proceeds to satisfy all liens and sales costs, and to amend the confirmed plan to pay to the Trustee all amounts necessary to pay general unsecured claims in full plus 5.25% interest. Dean's fees and costs are also to be paid from the proceeds, with any remaining funds paid to Metts, which Dean estimates will be \$100,000.00.

As of the hearing date, Dean had not received any payment for the work performed for the filing of this bankruptcy case and representation of Metts post-petition. Dean filed this Application requesting a total of \$21,088.00 for work performed and expenses incurred from March 3, 2021, to April 6, 2022, with attached timesheets indicating a total of 151 hours billed.¹⁰ The timesheets provide the date, individual performing the work, time spent in minutes, amount charged, and descriptions of the work performed. Almost all descriptions of work performed are vague, with entries that only state "research," "research and draft," "emails," "phone calls," or "negotiations" without any other context. Other entries are duplicative or not clearly supported by the docket or record. For example, there are time entries by both Dean and his paralegal to attend Metts' interview on May 2, 2021, and the § 341 meeting on July 14, 2021, but there is nothing in the record supporting the need for both. There are entries for a July 8, 2021, meeting with the Trustee, which appears for the benefit of Dean and his paralegal as new bankruptcy practitioners – not ordinary expenses in a Chapter 13 case billable to the client. There is no "motion to extend" filed in this case to support Dean's pre-petition time entry for that work on May 4, 2021. Dean also

⁹ ECF Nos. 86 & 90.

¹⁰ There are several discrepancies between the Application and the timesheets attached as an exhibit thereto. The Application states it is "the final fee request for services rendered as attorney from the period of September of 2020 to December 2021," but the timesheets include entries from March 3, 2021, through April 6, 2022. The Application requests compensation in inconsistent amounts of \$16,831.75 and \$21,088.00; the total fees and expenses calculated in the timesheets is \$21,088.00. The Court will consider the most expansive dates and amounts provided in the Application and timesheets.

charged 60 minutes for the September 16, 2021, confirmation hearing, which was continued in advance and not held. Other entries are for multiple tasks, such as “email negotiations, research and drafting,” “phone calls, emails, paperwork regarding land sale” and “emails, client advisement, drafting.” There are also entries for clerical tasks, including “paperwork,” filing documents with the court, and serving documents. Further, all entries are in 15-minute increments instead of tenths of an hour increments recommended in the United States Trustee’s *Guide for Reviewing Applications for Compensation and Reimbursement of Expenses filed Under 11 U.S.C. 330*, 28 C.F.R. § pt. 58, App. A.

The Trustee filed a Response, acknowledging this case presented unusual facts, Dean is entitled to a fee more than this District’s “no look fee” of \$4,000.00, and Metts is able to pay the requested fees from the sale proceeds. However, the Trustee questions the reasonableness of Dean’s fees and the billing practices described above and notes some discrepancies between Dean’s time entries and the docket. Dean submitted an email from Metts stating, although “Mr. Dean has requested a greater sum of money than was initially agreed upon . . . [he] has put in much more work than he initially thought . . . [and] much more than I initially thought would be necessary.” Metts appears to request the Court award Dean “the full amount requested . . . [or] at least . . . a large portion of it.”

The Court notes that Dean’s hourly rate is low at approximately one-half the market rate.¹¹ However, he appeared to take far longer than is typical for each task and a great deal of the time spent may have been learning the basics, researching common bankruptcy issues, and correcting

¹¹ See *In re Smith*, 624 B.R. 781, 796-97 (Bankr. D.S.C. 2021) (“In reviewing several fee agreements for other attorneys who represent debtors in chapter 13 cases in this District filed around the same time as this matter, when charging on an hourly basis, it appears debtors’ counsel generally charge between \$225 and \$360 per hour for any hourly work conducted by the attorney and between \$95 and \$100 per hour for work conducted by a paraprofessional.”)

errors in filed pleadings. There has been no activity on the docket since the June 9, 2022, hearing on the Application to indicate the sale has closed, and no modified plan has been filed. Therefore, the Court cannot determine if the path going forward outlined by Dean at the hearing has been or will be successful.

APPLICABLE AUTHORITIES

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and the Court may enter a final order.

SC LBR 2016-1 sets forth procedures for approval of reasonable attorney's fees for those representing Chapter 13 debtors in this District. The attorneys may elect to proceed under SC LBR 2016-1(b)(1), which establishes an expedited fee in an amount deemed presumptively reasonable for debtor's counsel to charge for services through the conclusion of a typical bankruptcy case and does not require the attorney to keep time records. SC LBR 2016-1(b)(2) provides a procedure for fees incurred for additional unexpected or unanticipated events as they arise in some cases. SC LBR 2016-1(b)(3) also provides hourly billing as an alternative to the procedures provided by SC LBR 2016-1(b)(1) and (2), requiring more of the attorney.

SC LBR 9011-1(a) requires attorneys admitted to practice before this Court, prior to appearing in a matter or submitting a filing with the Court, to "possess a working knowledge of the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, the local rules, local administrative and operating orders, Chambers Guidelines, and the applicable local rules of the United States District Court."

The Bankruptcy Code requires any attorney representing a debtor to "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, and the source of such

compensation.” 11 U.S.C. § 329(a). If the compensation exceeds the reasonable value of services provided, the Court may cancel the retainer agreement or order the return of payment to the extent excessive to the estate or the entity that made the payment. 11 U.S.C. § 329(b). The Court may award to a debtor’s attorney “reasonable compensation for actual, necessary services rendered by the . . . attorney . . . and reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). Additionally, “[i]n a . . . 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). The Court is also provided authority to determine whether any payment to debtor’s counsel, or any agreement therefor, is excessive under Fed. R. Bankr. P. 2017.

In determining the amount of reasonable compensation to be awarded . . . 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). However, “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). Thus, “the

court may . . . award compensation that is less than the amount of compensation that is requested.”

11 U.S.C. § 330(a)(2). To adhere to the requirements under § 330(a), the United States Trustee provides the following guidance:

Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noticed in detail and not combined or ‘lumped’ together, with each service showing a separate time entry . . . Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication . . . If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

28 C.F.R. § pt. 58, App. A(b)(4)(v).

In addition to the factors set forth in § 330(a)(3), the Fourth Circuit utilizes a lodestar method to evaluate the reasonableness of attorney’s fees. To determine the lodestar figure, the Court multiplies “the number of reasonable hours expended times a reasonable rate.” *McAfee v. Boczar*, 738 F.3d 81, 88 (4th Cir. 2013) (quoting *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009)). To determine what is reasonable in terms of hours expended and the rate charged, the Court must consider the following factors:

(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.

Id. at 88 n.5 (citations omitted). “The burden of demonstrating that a requested fee is reasonable always rests on the attorney requesting the fee.” *In re Smith*, 624 B.R. 781, 795 (Bankr. D.S.C. 2021) (citations omitted).

Bankruptcy courts examine professional compensation for several reasons:

There is a concern for protecting the interest of a debtor in financially distressed circumstances from possible overreaching. There is the additional concern of protecting creditors since, in any case in which a debtor is paying less than 100% to unsecured creditors, the creditors are essentially paying the debtor's attorney's fees. Further, the Bankruptcy Code recognizes that there is an inherent public interest that must be considered in awarding fees.

In re Dabney, 417 B.R. 826, 829 (Bankr. N.D. Ga. 2009) (quotation marks and citation omitted).

However, bankruptcy courts also recognize the need to award compensation that is “generous enough to encourage lawyers and others to render the necessary and exacting services that bankruptcy cases often require.” *Id.* (quotation marks and citation omitted).

Courts disfavor certain billing practices that impede a reasonableness review and/or result in excessive charges to the client. Vague task entries hinder the Court's review, as “[p]roper documentation is the key to ascertaining the number of hours reasonably spent on legal tasks.” *Two Men and A Truck/Int'l, Inc. v. A Mover Inc.*, 128 F. Supp. 3d 919, 925 (E.D. Va. 2015) (citations omitted); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983) (while counsel “is not required to record in great detail how each minute of his time was expended . . . at least counsel should identify the general subject matter of his time expenditures” (citation omitted)). Likewise, block billing, or “the practice of grouping, or lumping, several tasks together under a single entry, without specifying the amount of time spent on each particular task,” *id.* (quotations and citations omitted), “impairs the Court's ability to determine the reasonableness of the time spent and is disfavored.” *Warren v. Dill (In re Warren)*, 532 B.R. 655, 665 n.11 (Bankr. D.S.C. 2015). Billing in quarter-hour increments can lead to charging the client for more time than necessary to complete the task. *See E. Associated Coal Corp. v. Dir., Off. of Workers' Comp. Programs*, 724 F.3d 561, 576 (4th Cir. 2013) (citing *Broyles v. Dir., Off. of Workers' Comp. Programs*, 974 F.2d 508, 510-11 (4th Cir. 1992)). “In appropriate circumstances, a court may reduce a fee award for the use of quarter-hour billing to reflect the risk of over billing.” *Ashley II*

of Charleston, L.L.C. v. PCS Nitrogen, Inc., C/A No. 2:05-2782-MBS, 2015 WL 4469765, at *9 (D.S.C. July 21, 2015) (citations omitted). Courts in the Fourth Circuit have also “determined that because purely clerical tasks are ordinarily a part of a law office’s overhead, (which is covered in the hourly rate), they should not be compensated for at all.” *Two Men and A Truck/Int’l, Inc.*, 128 F. Supp. 3d at 929.

CONCLUSION

The Court encourages new attorneys to participate in the bankruptcy process and an attorney must start somewhere to gain experience. This case – Dean’s first – was not without unusual events and if the plan outlined, but not yet filed, is successful, the anticipated result is better for creditors and the debtor than most cases. Metts does not object to Dean’s fees, and the amount Dean is paid will not adversely affect creditors, assuming the sale of the properties is consummated and the Chapter 13 plan is amended as intended. Nevertheless, without an adequate record, these facts do not automatically entitle the attorney to extraordinary compensation. Section 330(a) and the authorities set forth above preclude the Court from turning a blind eye to the amount of attorney’s fees charged and inadequate billing practices employed here.

On balance, the Fourth Circuit’s lodestar analysis calls for a reduction in fees. Metts requested Dean’s services understanding this was his first bankruptcy case because of their pre-existing professional relationship. Under this fact, Dean’s prior relationship with Metts supports his Application. Regardless, SC LBR 9011-1(a) requires attorneys practicing in this Court to be familiar with bankruptcy authorities before they appear in a matter or submit a filing with the Court. While Dean’s hourly rate of \$150.00 is lower than the market rate for a standard Chapter 13 case, the hours expended were excessive, resulting in attorney’s fees that exceed those reasonably necessary for the services provided in this Chapter 13 case. The evidence indicates

significant time was spent because of Dean's lack of prior bankruptcy experience. It is commendable and necessary that Dean spent the time to learn, but the financial burden of that education – which Dean can utilize in the future – cannot fall solely on Metts. Although Dean's hourly rate is lower than those usually charged by experienced practitioners before the Court, the excessive time and labor Dean expended because of his inexperience outweigh the favorable rate charged and any lost opportunity costs arising from his representation.

Additionally, the record does not indicate any extraordinarily complex issues to justify the requested compensation. Although Dean cited to Metts' unfavorable financial circumstances as a factor in support of his Application, representation of financially distressed clients facing foreclosure of significant real property assets is routine for experienced bankruptcy practitioners. To this end, the circumstances presented by Metts' reorganization are neither novel nor undesirable within the district's bankruptcy bar. In the Court's experience, the compensation sought by Dean exceeds the fees awarded for similarly situated cases. Accordingly, the lodestar test warrants a reduction of fees.

Finally, Dean's billing practices hamper the Court's reasonableness review. Many time entries are vague, often with no reference to the specific nature of the work. Some entries are duplicative, contradicted by the record, or for clerical tasks. Dean's use of block billing impedes the Court's reasonableness review and appears to increase the time recorded and fees charged. Further, his billing in quarter-hour increments may have led to charging Metts for more time than necessary to complete the task, which cannot be confirmed (or refuted) due to the vagueness of many of the entries. Thus, the Court cannot conclude that all fees requested were for services necessary to the administration of the case or beneficial at the time they were rendered. 11 U.S.C. § 330(a)(3)(C).

Nevertheless, the Court finds some fees and expenses are reasonable and were necessary and/or beneficial to this case. From a review of the Application and the record, there is sufficient evidence to demonstrate \$10,438.00 in professional fees and costs are reasonable.¹² Some leniency was afforded in this review, but fee applications should not require the strenuous evaluation, comparison to the case docket, and guesswork employed here. After such efforts and following a hearing, the Court was able to determine the approximate reasonable work performed and reasonable fees earned. Any fees requested that exceed this amount are not reasonable and, therefore, cannot be authorized by the Court pursuant to § 330(a).

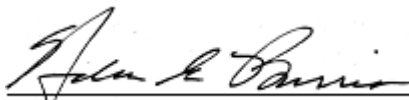
IT IS, THEREFORE, ORDERED THAT:

1. the Amended Application for Compensation filed by Benjamin Laurence Dean on behalf of Time Capsule Estate Planning, LLC is approved in the amount of \$10,438.00;
2. Dean shall file a Report of Sale in substantial conformance with the Court's local form as required by SC LBR 6004-1(c) and the promised amended plan; and
3. any further relief requested in the Amended Application for Compensation is denied.

**FILED BY THE COURT
06/30/2022**



Entered: 06/30/2022


Chief US Bankruptcy Judge
District of South Carolina

¹² Attached are redacted copies of Dean's timesheets reflecting the reasonable fees and costs allowed.

Allowed Reasonable Attorney's Fees and Expenses

Date	Individual	Time Spent in Minutes	Amount
3/3/2021	Attorney	30	75
3/8/2021	Attorney	30	75
4/8/2021	Attorney	60	150
4/9/2021	Attorney	75	187.50
4/25/2021	Attorney	30	75
4/28/2021	Paralegal	45	56.25
4/29/2021	Paralegal	105	93.75
5/2/2021	Attorney	180	300
5/11/2021	Attorney	30	75
5/18/2021	Attorney	15	37.50
5/26/2021	Attorney	90	225
6/1/2021	Attorney	135	337.50
6/2/2021	Filing fees		313
6/6/2021	Attorney	15	37.50
6/8/2021	Attorney	15	37.50
6/14/2021	Attorney	60	150
6/16/2021	Attorney	15	37.50
6/19/2021	Attorney	15	37.50
6/21/2021	Attorney	45	112.50
7/12/2021	Attorney	165	412.50
7/14/2021	Attorney	105	262.50
8/11/2021	Attorney	240	600
8/13/2021	Attorney	180	450
8/16/2021	Attorney	60	150
8/18/2021	Attorney	240	600
8/19/2021	Attorney	60	150
8/19/2021	Attorney	15	37.50
9/7/2021	Attorney	15	37.50
9/9/2021	Attorney	15	37.50
9/10/2021	Attorney	60	150
9/26/2021	Attorney	45	112.50
9/27/2021	Attorney	60	150
10/1/2021	Attorney	60	150
10/3/2021	Attorney	30	75
10/4/2021	Attorney	60	150
10/26/2021	Attorney	45	112.50
10/27/2021	Attorney	15	37.50
10/27/2021	Paralegal	30	37.50
11/9/2021	Attorney	120	300
11/18/2021	Paralegal	45	56.25
11/27/2021	Attorney	180	450
12/14/2021	Attorney	45	112.50
12/15/2021	Attorney	45	112.50
12/16/2021	Attorney	15	37.50
12/17/2021	Attorney	45	112.50

12/31/2021	Attorney	45	112.50
12/31/2021	Paralegal	45	56.25
1/3/2022	Attorney	30	75
1/20/2022	Attorney	30	75
1/21/2022	Attorney	60	150
1/24/2022	Attorney	30	75
1/25/2022	Attorney	30	75
1/25/2022	Paralegal	30	37.50
1/31/2022	Attorney	30	75
2/2/2022	Attorney	15	37.50
2/3/2022	Attorney	15	37.50
2/10/2022	Attorney	60	150
2/12/2022	Attorney	45	112.50
2/13/2022	Attorney	15	37.50
2/18/2022	Attorney	30	75
2/23/2022	Attorney	15	37.50
2/24/2022	Attorney	15	37.50
2/25/2022	Attorney	15	37.50
2/27/2022	Attorney	15	37.50
2/28/2022	Attorney	15	37.50
3/3/2022	Attorney	30	75
3/4/2022	Paralegal	60	75
3/4/2022	Attorney	75	187.50
3/5/2022	Paralegal	30	37.50
3/6/2022	Attorney	30	75
3/10/2022	Attorney	45	112.50
3/14/2022	Attorney	45	112.50
3/17/2022	Attorney	30	75
3/21/2022	Attorney	45	112.50
3/24/2022	Attorney	15	37.50
3/25/2022	Attorney	15	37.50
3/29/2022	Attorney	15	37.50
4/1/2022	Attorney	75	187.50
4/2/2022	Attorney	30	75
4/3/2022	Attorney	30	75
4/5/2022	Attorney	60	150
4/6/2022	Attorney	120	300
		TOTAL REASONABLE ATTORNEY'S FEES AND COSTS	\$10,438.00