



THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:

DATED: July 3, 2019

  
G. Michael Halfenger  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re:

Hoang Nguyen and  
Kim Nguyen,

Case No. 17-27906-GMH  
Chapter 13

Debtors.

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**ORDER ON APPLICATION OF DEBTORS' COUNSEL FOR COMPENSATION**

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The court dismissed this case before plan confirmation because the debtors failed to make required payments to the trustee. Before dismissal, Kingstad Law Firm LLC, counsel for the debtors, applied for compensation in the amount of \$9,645 for services rendered through April 15, 2019, by David Kingstad, an attorney, and Mary Scharmach, a paralegal employed by Kingstad. ECF No. 75; see 11 U.S.C. §330(a)(1) & (4). Based on the record, the debtors have paid Kingstad \$2,000, leaving a balance of requested compensation of \$7,645. Counsel filed an affidavit of service indicating that notice of the application for compensation was served on all parties in interest, including the debtors and all creditors, and no one objected.

Under §330(a)(1)(A), “the court may award . . . reasonable compensation for actual, necessary services rendered by . . . [an] attorney and by any paraprofessional person employed by any such person”. “In a . . . chapter 13 case in which the debtor is an individual,” like this one, “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.” §330(a)(4)(B).

“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 . . . the time spent on such services”; “the rates charged for such services”; and “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”. §330(a)(3)(A), (B) & (D). The court also considers relevant those factors listed in Rule 20:1.5(a) of the Wisconsin Supreme Court’s Rules of Professional Conduct for Attorneys, which include “the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly”; “the fee customarily charged in the locality for similar legal services”; and “the amount involved and the results obtained”. Cf. *In re Payne*, 431 F.3d 1055, 1060 (7th Cir. 2005) (Easterbrook, J., dissenting) (citing *Butner v. United States*, 440 U.S. 48 (1979)) (“Use of non-bankruptcy law to flesh out terms not defined in the Bankruptcy Code is the norm.”).

The court “maintain[s] a schedule of fees presumed to be reasonable compensation to attorneys representing Chapter 13 debtors.” Local Rule 2016.1(a) (Bankr. E.D. Wis. 2017); see 3 *Collier on Bankruptcy* ¶329.04[1][a] (Richard Levin & Henry Sommer eds., 16th ed. 2019) [hereinafter *Collier*] (“Local rules may place a presumptive limit on the amount of fees to be paid to the debtor’s attorney for filing a . . . chapter 13

case.”). “By setting a standard maximum, no look, presumptive fee, courts seek to save time both for themselves and for debtors’ attorneys in cases that are often routine and quite similar to one another.” *Collier, supra*.

Still, “[s]ome Chapter 13 cases . . . reasonably require significantly more work than the presumptively reasonable fee contemplates . . . .” Local Rule 2016.1 app. at 1, available at <https://www.wieb.uscourts.gov/node/110>. In such cases, attorneys seeking “total compensation that exceeds the presumed reasonable fee . . . must file one or more fee applications . . . for all services . . . for which the attorney seeks compensation.” Local Rule 2016.1(d); cf. *In re Geraci*, 138 F.3d 314, 321 (7th Cir. 1998) (describing a local practice that “requires a detailed itemization statement in any no-asset consumer case where counsel discloses a fee in excess of the presumptively reasonable amount”). “When counsel files an application for fees, the burden of proving that the actual fee is reasonable is on the lawyer requesting the fee.” *In re Nelson*, No. 16-22089, 2017 WL 449581, at \*3 (Bankr. E.D. Wis. Feb. 1, 2017). And even if no one objects to the requested fee award, “the court has an independent duty to review each fee application.” *Id.*

## II

Here, Kingstad requests compensation in an amount that dramatically exceeds what the court presumptively considers reasonable. Where, as here, “the Court dismisses a chapter 13 case before plan confirmation, the presumed reasonable fee . . . is \$1,000.” Local Rule 2016.1 app. at 1. Kingstad requests **nearly ten times** that amount. Indeed, even if Kingstad had represented the debtors *through* plan confirmation, the presumptively reasonable fee would be only \$5,000. *Id.* (stating “the presumptively reasonable fee” where “the debtor moves to participate in the Court’s mortgage modification mediation program”). But see ECF No. 75, at 1 (noting that when this case was filed the “no-look” fee was \$4,000). Kingstad asks for nearly double *that* amount.

Kingstad’s application states that David Kingstad and Mary Scharmach “provided pre-filing advice, petition and schedule preparation, participation in the

Court's MMM Program, representation in multiple objections to Trustee's motions to dismiss case, Trustee's objection to confirmation of Plan, motion for relief and multiple amended Plans and schedules." ECF No. 75, at 2. These types of services are among the "ordinary, necessary and reasonably foreseeable pre-confirmation services" that "the Court [typically] expects debtor's counsel to provide in exchange for the presumptively reasonable fee." Local Rule 2016.1 app. at 1 (explaining that, "[g]enerally, the presumed reasonable fee will compensate the debtor's attorney fairly for" such services, including "[p]reparation and amendment of the petition [and] schedules", "[a]ddressing motions for relief from stay", and "[a]ddressing objections to confirmation").

Of course, not all cases are typical, which is why the court's procedure allows counsel to apply for compensation that exceeds the no-look fee. But to award such compensation, the court must have a basis for concluding that the case is atypical in a way that justifies such an award. Here, the court cannot determine, based on the application and the accompanying "chronological record of each timekeeper's time spent on the case", Local Rule 2016(a)(2), whether this was "an *unusually* complex case" that "*reasonably* require[d] significantly more work than the presumptively reasonable fee contemplates", Local Rule 2016.1 app. at 1 (emphasis added), or, for that matter, "how counsel's services were of value to the debtors," given that the plan was never confirmed. See *In re Ward*, 511 B.R. 909, 914 (Bankr. E.D. Wis. 2014); see also *In re Phillips*, 291 B.R. 72, 83 (Bankr. S.D. Tex. 2003) ("Counsel is not responsible to assure that the Debtor will fulfill any of the . . . requirements for confirming a plan", but "[t]o justify more than a nominal fee, counsel must provide evidence of", among other things, "valuable professional efforts . . . to confirm a chapter 13 plan . . . and a reasonable belief that a plan could be confirmed").

Based on the record and considering all relevant factors—including "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",

§330(a)(3)(D), and “the results obtained”, Wis. SCR 20:1.5(a)(4)—the court concludes that the \$2,000 pre-petition compensation paid directly to Kingstad, as disclosed on Form B2030, reasonably compensates Kingstad for all actual, necessary services rendered. ECF No. 11, at 49; see Local Rule 2016.1 app. at 1. Kingstad has not shown that any additional compensation is reasonable here, so the court will not award any. Cf. *In re Ryan*, 517 B.R. 905, 909 (Bankr. E.D. Wis. 2014) (“While the Court can conceive of extraordinary cases in which the . . . presumed reasonable fee . . . could be expended without drafting and obtaining confirmation of a plan, this case is not one of them.”).

### III

For the reasons stated above, IT IS ORDERED that reasonable compensation for actual, necessary services rendered by David Kingstad and Mary Scharmach is awarded to Kingstad Law Firm LLC in the amount of \$2,000, pursuant to 11 U.S.C. §330(a)(1)(A); the amount so awarded is allowed as an administrative expense, pursuant to 11 U.S.C. §503(b)(2); and all other requested compensation is disallowed without prejudice.

IT IS FURTHER ORDERED that Kingstad may request an evidentiary hearing no later than 14 days after the date on which this order is entered if counsel desires to present testimonial or other new evidence in an effort to demonstrate that the court should award compensation in addition to that awarded above.

IT IS FURTHER ORDERED that the trustee shall retain any funds on hand until the earlier of the date on which the court enters an order permitting distribution of such funds or, if Kingstad does not timely request an evidentiary hearing as this order allows, the day after the above-described 14-day period ends.

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