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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

MICHAEL LEONARD MCGEE,

Debtor.

Case No. 24-23546-A-13

GC-1

MEMORANDUM

Argued and submitted on March 4, 2025

at Sacramento, California

Honorable Fredrick E. Clement, Chief Bankruptcy Judge Presiding

Appearances: _____
Gerald Glazer for Glazer and Cherry,
applicant; Kristen Koo for David Cusick,
Chapter 13 trustee

1 LBR 2016-1(b) requires Chapter 13 debtor(s)' counsel moving for
2 fees under 11 U.S.C. § 330 to fix the amount of the fees by the
3 lodestar method, which multiplies the hours expended by a reasonable
4 hourly rate. The firm of Glazer and Cherry ("the firm") asks the
5 court to approve a flat fee, without showing the hours it expended on
6 behalf of the client or its reasonable hourly rate. Should the court
7 approve the fee?

8 **I. FACTS**

9 Michael McGee ("McGee") filed a Chapter 13 bankruptcy. His
10 counsel of record is the firm of Glazer and Cherry. McGee's assets,
11 income, and debt profile is unremarkable.

12 The firm agreed to undertake McGee's representation for a flat
13 fee of \$7,000; that fee was to be paid as \$1,750 prior to filing and
14 the remainder, i.e., \$5,250, by the Chapter 13 trustee out of the
15 debtor's monthly plan payments to the Chapter 13 trustee. The fee
16 agreement does not specify the rate of payment by the Chapter 13
17 trustee.

18 With the assistance of the firm, McGee proposed and confirmed his
19 Chapter 13 plan. As a part of the plan, the firm elected to have its
20 fee determined after noticed motion, rather than by accepting the flat
21 fee authorized by local rules.

22 **II. PROCEDURE**

23 Glazer and Cherry now move for compensation. The firm seeks
24 approval of its flat fee of \$7,000; \$1,750 paid in advance and the
25 remaining \$5,250 to be paid in equal monthly payments of \$300 with a
26 final single payment of \$150. The motion is supported by the
27 declaration of attorney Gerald Glazer and debtor McGee. Glazer avers
28 that he has been an attorney for "over 40 years" and has "worked on

1 thousands of bankruptcy cases.” He also states that the firm’s
2 services were “necessary and beneficial to the administration of the
3 estate.” The particulars of the firm’s work are not described in the
4 motion or its ancillary documents. Furthermore, the motion is not
5 supported by time records or a description of services rendered.

6 **III. JURISDICTION**

7 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);
8 see also General Order No. 182 of the Eastern District of California.
9 All matters fall within the bankruptcy court's core jurisdiction, 28
10 U.S.C. § 157(a) (arising “under title 11”) as to motions for
11 compensation, see 28 U.S.C. § 157(a); 28 U.S.C. § 11 U.S.C. §§ 328(a),
12 330(a)(4)(B); *In re Green*, No. 12-17945, 2013 WL 4603005, at *1
13 (Bankr. E.D. Cal. Aug. 28, 2013); *In re Riverside-Linden Investment*
14 *Co.*, 85 B.R. 107, 108 (Bankr. S.D. Cal. 1988).

15 **IV. LAW**

16 Section 330 of the Bankruptcy Code provides the rule of decision.
17 11 U.S.C. § 330. Debtor’s counsel is entitled to “reasonable
18 compensation for actual, necessary services rendered.” *Id.* at §
19 330(a)(1)(A), (a)(4)(B). The ordinary fashion for computing a
20 reasonable fee is the lodestar method. *Sw. Media, Inc. v. Rau*, 708
21 F.2d 419, 427 (9th Cir. 1983) (“[t]he primary method used to determine
22 a reasonable attorney fee in a bankruptcy case is to multiply the
23 number of hours expended by an hourly rate”), citing *In re THC*
24 *Financial Corp.*, 659 F.2d 951, 954-56 (9th Cir.1981); *In re Beverly*
25 *Crest Convalescent Hospital, Inc.*, 548 F.2d 817, 820-21 (9th
26 Cir.1976). The applicant bears the burden of proof. *Hensley v.*
27 *Eckerhart*, 461 U.S. 424, 437 (1983); *In re Roderick Timber Co.*, 185
28 B.R. 601, 606 (9th Cir. BAP 1995). In determining a reasonable fee,

1 the court should weigh "the nature, the extent and the value" of the
2 services considering:

3 (A) the time spent on such services;

4 (B) the rates charged for such services;

5 (C) whether the services were necessary to the
6 administration of, or beneficial at the time at
7 which the service was rendered toward the
8 completion of, a case under this title;

9 (D) whether the services were performed within a
10 reasonable amount of time commensurate with the
11 complexity, importance, and nature of the
12 problem, issue, or task addressed;

13 (E) with respect to a professional person,
14 whether the person is board certified or
15 otherwise has demonstrated skill and experience
16 in the bankruptcy field; and

17 (F) whether the compensation is reasonable based
18 on the customary compensation charged by
19 comparably skilled practitioners in cases other
20 than cases under this title.

21 11 U.S.C. § 330(a)(3).

22 By local rule, the bankruptcy court has adopted a bifurcated
23 approach to determining the reasonableness of fees for Chapter 13
24 debtor's lawyers. LBR 2016-1. Attorneys may fix their fee: (1) by
25 noticed motion, LBR 2016-1(b); or (2) accept a predetermined flat fee
26 set by the court, LBR 2016-1(c); *In re Ohlinger*, No. 24-21356-A-13,
27 2024 WL 4989054, at *1 (Bankr. E.D. Cal. Dec. 5, 2024). Attorneys
28 electing to proceed by noticed motion must do so in conformance with
LBR 2016-1(b).

(b) Court Approval. Counsel electing
compensation under this subdivision shall seek
court approval of compensation for services
rendered and/or costs incurred by application.
11 U.S.C. § 330; Fed. R. Bankr. P. 2016. Notice
shall be consistent with Rule 2002(a), as limited
by Rule 2002(h). Fed. R. Bankr. P. 2002(a), (h);
LBR 2002-3.

1) Fees and Costs.

Absent a showing that it will not adequately compensate debtor(s)' counsel, compensation for services rendered and the amount of actual, necessary costs shall be determined by the lodestar method.

...

LBR 20161-(b) (1) (emphasis added).

V. DISCUSSION

In the Eastern District of California, a Chapter 13 debtor(s)' counsel may fix the amount of his/her "reasonable compensation" in one of two ways: (1) by the lodestar method after noticed motion; or (2) without court approval by accepting a predetermined flat fee. LBR 2016-1; *In re Ohlinger*, No. 24-21356-A-13, 2024 WL 4989054, at *8 (Bankr. E.D. Cal. Dec. 5, 2024) (upholding LBR 2016-1 as a proper exercise of the court's rulemaking authority). In this case, the firm has opted to be paid after noticed motion. Chapter 13 plan § 3.05, ECF No. 3.

LBR 2016-1(b) (1) provides, "Absent a showing that it will not adequately compensate debtor(s)' counsel, compensation for services rendered and the amount of actual, necessary costs shall be determined by the lodestar method." Here, there has been no showing that the lodestar method of computation will not adequately compensate the firm. As a result, the firm must prove its fees by providing evidence, *viz.*, time records, and its reasonable hourly rate. It has not done so.

The firm invites the court to depart from local rules by approving a flat fee, agreed upon by counsel and the debtor, without any showing of the reasonableness of the fee. This court will not do so. The court must find the fee to be "reasonable compensation." 11

1 U.S.C. § 330. Moreover, absent cause, LBR 1001-1(f), the court should
2 not ignore its own local rules. "Rules of practice adopted by the
3 United States District Courts, as the one with which we are here
4 concerned, have the force and effect of law, and are binding upon the
5 parties and the court which promulgated them until they are changed in
6 the appropriate manner." *Woods Const. Co. v. Atlas Chem. Indus.,*
7 *Inc.*, 337 F.2d 888, 890-91 (10th Cir. 1964); see also *Blue v. U.S.*
8 *Dep't of Army*, 914 F.2d 525, 550 (4th Cir. 1990) (overturning the
9 decision because "the district court failed to follow its own local
10 rules"); *Ortega v. Geelhaar*, 914 F.2d 495, 497-98 (4th Cir. 1990)
11 ("the district court ignored its own local rules"); *Manshack v. Sw.*
12 *Elec. Power Co.*, 915 F.2d 172, 175 (5th Cir. 1990) (chastising the
13 district court because it should "scrupulously adhere[] to its own
14 local procedures"). Here, there has been no showing of cause
15 justifying departure from LBR 2016-1(b)(1).

16 **VI. CONCLUSION**

17 For each of these reasons, the motion is denied without
18 prejudice.

19
20 **Dated:** March 04, 2025

21 

22 **Fredrick E. Clement**
23 **United States Bankruptcy Judge**

Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked , via the U.S. mail.

Debtor(s)	Attorneys for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
All Creditors	

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