

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: JEFFREY HASSELL and
LADERNA HASSELL,

No. 23-10324-j13

Debtors.

**MEMORANDUM OPINION AND ORDER GRANTING, IN PART, AND
DENYING, IN PART, ATTORNEY[’S] FIRST FEE APPLICATION**

THIS MATTER is before the Court on Attorney[’s] First Fee Application (“Fee Application” – Doc. 28) filed by Debtors’ counsel, New Mexico Financial and Family Law, P.C. (“Attorney”). Attorney requests approval, as a priority, administrative expense, of total fees and expenses, including applicable gross receipts tax, in the amount of \$8,152.91 for work performed from April 7, 2022 to June 26, 2023.

Having examined the billing statements attached to the Fee Application and the record of this bankruptcy case,¹ and being otherwise sufficiently informed, the Court concludes that the requested compensation should be approved, except for compensation sought for fees Attorney inappropriately charged for work correcting its own mistakes. Although such work was actual and necessary, it is not reasonable for an attorney to charge its client for correcting its own mistakes. The Court will not impose sanctions in this case for Attorney charging Debtors to correct Attorney’s own mistakes, or disallow fees as a result of Attorney’s errant Rule 2016(b) disclosure of compensation but cautions Attorney with respect to both matters.

¹ The Court takes judicial notice of the docket and the documents filed of record in this bankruptcy case. *See St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1171-72 (10th Cir. 1979) (“[A] . . . court may . . . take judicial notice, whether requested or not of its own records and files”) (citation omitted), *abrogated on other grounds by McGregor v. Gibson*, 248 F.3d 946 (10th Cir. 2001).

The Court, therefore, will disallow fees and associated gross receipts taxes for work correcting Attorney's own mistakes, and approve the remainder of the fees and expenses and applicable gross receipts taxes as requested in the Fee Application.

BACKGROUND

Debtors filed a voluntary petition under chapter 13 of the Bankruptcy Code on April 19, 2023. Doc. 1. Debtors filed a chapter 13 plan (the "Original Plan" – Doc. 2) on the same date. Part 1 of the Original Plan checked the "Not Included" box in Part 1.1 (disclosing whether the plan limits the amount of a secured claim in Part 4.2, 4.3, and or 4.4); Part 1.2 (disclosing whether the plan seeks to avoid a judicial lien or nonpossessory, nonpurchase-money security interest in Part 8); and Part 1.3 (disclosing whether the plan contains any nonstandard provisions in Part 14). Part 8 of the Original Plan seeks to avoid a transcript of judgment as a judicial lien. Part 1 of the form Chapter 13 Plan provides:

The Debtor must check one box on each line of the following table: if an item is checked "Not Included," both boxes are checked, or neither box is checked, the plan provision will be void.

NM LF 3015-2.²

The Clerk of Court issued a Text-Only Notice on April 19, 2023, which included the following:

Filer selected "Not Included" in Part 1.2 of the Plan. As a result any plan provision set out in Part 8 will be void. Deadline for Correction of Error: 4/26/2023.

Attorney filed a First Amended Chapter 13 Plan ("First Amended Plan" – Doc. 13) on April 25, 2023. The First Amended Plan checked the "Included" box in Part 1.2 indicating that the First Amended Plan seeks to avoid a judicial lien in Part 8. Part 12 of the First Amended Plan, which requires identification of the amendments and the reason for the amendments states that "Section 1.2" was "Amended to Include this provision," and that the reason for the

² Use of the Court's local form chapter 13 plan, NM LF 3015-2, is required in this district. *See* NM LR 3015-2(a) (Mandatory Form Chapter 13 Plan).

amendment is “Software inadvertently checked the not included box.” Attorney filed a notice of the deadline to object to the First Amended Plan (Doc. 14) the same.

Attorney filed a Disclosure of Compensation (Doc. 5) disclosing that Attorney has agreed to accept \$5,000.00 for legal services, that Attorney received \$2,800.00 prior to the filing of the Disclosure Statement, and that a balance of \$2,200.00 remains due. About five days later, Attorney filed an Amended Disclosure of Compensation (Doc. 12), which disclosed that Attorney received a retainer of \$5,000.00 and will bill against the retainer at the hourly rate of \$250.00.³ Both the Original Plan and the First Amended Plan stated that Attorney received \$5,000.00 pre-petition and anticipates charging an additional \$10,000.00 in fees and costs through plan confirmation. *See* Doc. 2 and Doc. 13.

Debtors confirmed the First Amended Plan on May 31, 2021. Doc. 25. Attorney filed the First Fee Application (Doc. 28) on July 24, 2023, together with a notice of the deadline to object to the First Fee Application (Doc. 29). No objections to the First Fee Application were filed.

The billing invoices attached to the First Fee Application include the following time entries for work in connection with the filing of the First Amended Plan and the notice of the deadline to object to confirmation:

Date	Work Description	Time	Hourly Rate	Amount Charged
04/20/23	Receive & review Clerk’s Notice of Error on the Plan filing	.10	\$250.00	\$25.00
04/24/23	Draft an Amended Plan and an e-mail to LaDerna with the Plan attached for review, signature and filing tomorrow	.30	\$250.00	\$75.00

³ Attorney states in the Fee Application that the hourly rate it charges for professional services is \$225.00, which is contrary to the hourly rate of \$250.00 reported in the Amended Disclosure of Compensation and reflected in the billing statements attached to the Fee Application. Similarly, the hourly rate for paralegal services reported in the Fee Application is \$100.00, which is contrary to the hourly rate of \$150.00 for paralegal services contained in the billing statements attached to the Fee Application.

04/25/23	Draft Deadline Notice to Amended Plan	.30	\$150.00	\$45.00
04/25/23	Pull Matrix from CM/ECF	.10	\$150.00	\$15.00
04/25/23	Finalize First Amended Plan	.20	\$150.00	\$30.00
04/25/23	Finalize Deadline Notice	.20	\$150.00	\$30.00
			TOTAL:	\$220.00

DISCUSSION

A. Fees Charged to Correct an Attorney’s Own Mistakes are not Compensable

An attorney representing a debtor in a chapter 13 case may receive “reasonable compensation . . . for representing the interests of the debtor in connection with the bankruptcy case.” 11 U.S.C. § 330(a)(4)(B). “Reasonableness” is determined “based on a consideration of the benefit and necessity of such services to the debtor” as well as the other factors in 11 U.S.C. § 330.⁴ *Id.* The Court has an independent duty to assess the reasonableness of requested compensation, even when no party objects. *See In re Bird*, 577 B.R. 365, 373-74 (10th Cir. BAP 2017) (“When a professional submits an application for compensation, § 330 requires a bankruptcy court to independently review the requested fees and expenses, regardless of whether any objection has been made to the application.”); *In re Zamora*, 251 B.R. 591, 596 (D. Colo. 2000) (“A bankruptcy judge’s duty is to conduct a discrete inquiry into every request for attorney fees and that duty cannot be delegated.”). The party requesting compensation bears the burden of

⁴ The other factors identified in 11 U.S.C. § 330(a)(3) are:

- (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).

establishing that the requested fees are reasonable. *In re Mkt. Ctr. E. Retail Prop., Inc.*, 730 F.3d 1239, 1246 (10th Cir. 2013).

Having considered the Fee Application and the attached billing statements in light of the factors contained in 11 U.S.C. § 330 and the record of this bankruptcy case, the Court finds and concludes that Attorney may not be compensated for the time spent reviewing the Clerk's Notice of Error, drafting the First Amended Plan and related work, and preparing and serving the notice of deadline to object to the First Amended Plan. It is patently unreasonable for an attorney to charge a client to correct the attorney's own mistakes. *See In re Wheeler*, 439 B.R. 107, 110-11 (Bankr. E.D. Mich. 2010) (work performed to correct a mistake in a plan that either should not have been made in the first instance, or corrected before the plan was filed, are unnecessary and non-compensable).

The explanation given for the amendment contained in the First Amended Plan is “[s]oftware inadvertently checked the not included box.” But the actual reason for the need to file the First Amended Plan is Attorney's own error. Thus, even though the First Amended Plan benefitted the Debtors inasmuch as it enabled the Debtors to confirm a plan that avoided a judicial lien, services in connection with the drafting and filing of the First Amended Plan are not compensable.

Charging to prepare, file, and serve the associated notice of the deadline to object to the First Amended Plan is also unreasonable because the need to do so was necessitated by Attorney's initial mistake in checking the “Not Included” box in Part 1.2 of the Original Plan. By local rule, if a debtor files a chapter 13 plan with the petition, the clerk of court will include a copy of the plan with the notice of the bankruptcy filing, relieving the debtor of the requirement to send out a separate notice of the deadline to object to confirmation of a proposed chapter 13

plan. *See* NM LBR 3015-2.⁵ Had the Original Plan, which was filed with the petition, not contained the error, Debtors would not have been charged for preparing and serving the notice of deadline to object to confirmation of the Amended Plan.⁶

Attorney charged a total of \$220.00 for work relating to the First Amended Plan. The Court will disallow \$220.00 in attorney's fees requested in the First Fee Application, plus applicable gross receipts taxes.

Asking a court in a fee application to approve fees charged a client for time spent correcting the attorney's own mistakes, as reasonable compensation to be paid by the client, may be sanctionable, particularly where it is clear that counsel was entirely responsible for the mistake. *Cf. Trevino v. U.S. Bank Trust, N.A. (In re Trevino)*, 648 B.R. 847, 905 (Bankr. S.D. Tex. 2023) ("Section 105(a) operates as a codification of this Court's inherent authority to sanction a party for bad faith behavior," including counsel seeking fees for which it clearly is not entitled.). The Court will not impose any sanctions in this instance.

B. Rule 2016(b) Disclosures.

Finally, the Court cautions Attorney to pay careful attention in the future when filing the disclosure of compensation statement required by Fed. R. Bankr. P. 2016(b) (a "Rule 2016 Statement"). A Rule 2016 Statement is an attorney's certification that the disclosure is "a

⁵ The Bankruptcy Rules do not *require* a debtor to file the plan with the petition. *See* Fed. R. Bankr. P. 3015(b) ("The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter . . ."). Thus, if a debtor does not file a chapter 13 plan with the petition, the debtor is required to prepare and send a notice of the deadline to object to the proposed plan. In that situation, it is appropriate to charge for preparing and sending the notice of the deadline to object to confirmation.

⁶ It appears from the docket that Attorney failed to submit both the Original Plan and NM LF 3015-2(e) at case opening, such that Attorney would have had to notice out the Original Plan even if the Original Plan filed with the petition had not contained the error. *See* Text-Only Notice of Error entered by Clerk of Court on April 20, 2023.

complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.” Official Form B 2030.

The initial Rule 2016 Statement (Doc. 5) filed in this case certified that Attorney agreed to accept a total of \$5,000 for representing the Debtors in the case. Had the amended Rule 2016 Statement (Doc. 12) not been filed fairly soon after the original disclosure, the Court may have decided to cap Attorney’s fees in this case at \$5,000, essentially a flat fee, for all work performed in connection with this Chapter 13 case, notwithstanding the amount requested in the Fee Application. Attorney has made similar mistakes in filing Rule 2016 Statements in other cases.⁷

The attorney disclosure requirements of 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b) serve an important purpose and must be taken seriously. Even an inadvertent breach of

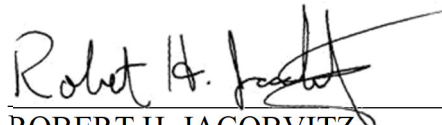
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Case Number	Initial Rule 2016 Statement	Amended Rule 2016 Statement
21-10770-t13	Attorney agreed to accept \$2,500 for legal services; received \$2,500 prior to filing the Rule 2016 Statement, with \$0.00 balance due (Doc. 5)	Attorney agreed to accept \$250.00 per hour for services performed, and received \$2,500 prior to the filing of the Rule 2016 Statement (Doc. 10)
21-10075-t13	Attorney agreed to accept \$8,000 for legal services; received \$3,000 prior to filing the Rule 2016 Statement, with \$5,000 balance due (Doc. 5)	Attorney agreed to accept \$15,000 for legal services; received \$3,000 prior to filing the Rule 2016 Statement, with \$12,000 balance due (Doc. 42)
21-10117-t13	Attorney agreed to accept \$2,500 for legal services; received \$2,500 prior to filing the Rule 2016 Statement, with \$0.00 balance due. (Doc. 5)	Attorney agreed to accept \$250.00 per hour; received \$2,500 prior to filing the Rule 2016 Statement, with \$1,500 balance due (Doc. 7)
20-10780-t13	Attorney agreed to accept \$3,000 for legal services; received \$3,000 prior to filing the Rule 2016 Statement, with \$0.00 balance due (Doc. 5)	Attorney agreed to accept \$250.00/hour for legal services; received \$3,000 prior to the filing of the Rule 2016 Statement, with \$0.00 balance due (Doc. 9). Attorney’s fee applications submitted in connection with this case totaled more than \$17,000. <i>See</i> Doc. 52 (approving compensation in the amount of \$15,580.81) and Doc. 65 (approving additional compensation in the amount of \$2,669.41)

the disclosure obligations can have very serious consequences, including the total disallowance of compensation, regardless of whether harm to creditors or to the debtor is shown. *See In re Stewart*, 970 F.3d 1255, 1267–68 (10th Cir. 2020); *see also In re Shelnut*, 577 B.R. 605, 610 (Bankr. S.D. Ga. 2017); *In re Hall*, 518 B.R. 202, 207 (Bankr. N.D.N.Y. 2014). Particularly in light of Attorney’s history of filing inaccurate Rule 2016 Statements and then amending them, Attorney is cautioned to exercise care in completing and filing Rule 2016 Statements in the future.

WHEREFORE, IT IS HEREBY ORDERED:

1. Attorney’s fees in the amount of \$220.00, plus applicable gross receipts taxes in amount of \$17.05 are DISALLOWED.
2. The remaining compensation requested in the First Fee Application, consisting of fees in the amount of \$6,980.00, associated gross receipts taxes in the amount of \$540.95, and expenses in the amount of \$394.90, together totaling \$7,915.85, are allowed as a priority administrative expense in this case.
3. The Chapter 13 Trustee is authorized to pay the fees and expenses allowed by this Order from estate funds, less the retainer, if applicable, and any pervious estate fund payments.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: August 30, 2023

COPY TO:

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