SO ORDERED.
SIGNED this 18th day of August, 2017

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 3:17-bk-30477-SHB
Chapter 7

DEBI KAY ASH
aka DEBI BOODY

Debtor

MEMORANDUM AND ORDER ON APRIL 27, 2017 SHOW CAUSE ORDER REGARDING FEES

The Court entered an Order on April 28, 2017, directing Debtor's counsel, Elliott Schuchardt, to appear and show cause why compensation in the amount of $1,300.00 paid by Debtor in this case does not "exceed[] the reasonable value of any such services" per 11 U.S.C. § 329(b) ("Show Cause Order"). [Doc. 20].

I. Facts and Procedural Posture

The Show Cause Order was precipitated by the Court's observation that the fees charged by Schuchardt as a partner in UpRight Law LLC ("UpRight Law") were significantly higher than fees charged by Schuchardt when filing cases as Schuchardt Law Firm, his sole practitioner law

firm. According to the Disclosure of Compensation of Attorney for Debtor(s) [Doc. 3], filed pursuant to Federal Rule of Bankruptcy Procedure 2016(b), Debtor paid $1,300.00 in legal fees before the petition was filed, and no further fees were owing to Schuchardt.

At the initial hearing on the Show Cause Order held on June 8, 2017, Schuchardt and Ryan M. Galloway, associate general counsel for UpRight Law, appeared. In support of the higher fees, Galloway argued the following:

> As it relates to the reason why you might see higher fees from Upright Law cases as opposed to Mr. Schuchardt's cases individually is that UpRight Law is a national bankruptcy law firm and the expenses of providing services to clients who are otherwise unable to get those services exceed that which you may experience for somebody who has, you know, walk-in type business, including, you know, the expenses of travel. I'm not sure if, you know, UpRight Law's clients come to UpRight Law specifically because, you know, they don't want the embarrassment of being associated with a local attorney who has significant ties to the individual community and personal relationship that go along with that. And because there are, we are talking about clients, generally, who are very rural who are seeking bankruptcy relief, you know, through, I guess, to at least some degree, non-traditional means. There are certain expenses that go along with that.
>
> . . . .
>
> The fact is the rates that were charged in these cases were independently negotiated by the debtors in these matters . . . .

[Doc. 34 at pp. 7-8; 13.] Galloway also argued that the value of the actual time expended in this case exceeded the fees that were charged to Debtor and were "either right in line with or more or less close to what [the high-volume filers in this region]" charge. [Doc. 34 at p. 8.] Because Galloway requested an opportunity to file supplemental documentation to support the fees charged in this case, the Court directed UpRight Law to clearly "identify for each entry whether it was contemporaneous and if not, what the source of the information is." [Doc. 34 at p. 12.] The United States Trustee was also provided an opportunity to file a response to any supplemental information filed by UpRight Law.

The Response of Elliott Schuchardt to Order to Appear and Show Cause ("Schuchardt's Response") [Doc. 37] was filed on June 23, 2017, along with an attachment entitled "Accounting – Ash – Google Sheets" ("the Accounting"). The Accounting reflects services rendered from August 24, 2016, through April 26, 2017, totaling 10.7 hours and $2,025.00.[1] Of the 10.7 hours, 6.7 hours were "billed" at an hourly rate of $250.00 ($1,675.00); 1.5 hour was "billed" at an hourly rate of $150.00 ($225.00); and 2.5 hours were "billed" at an hourly rate of $50.00 ($125.00). With respect to the Accounting, Schuchardt's Response states the following:

> NOW COMES Elliott Schuchardt, for himself and in his capacity as a partner of Law Solutions Chicago LLC, duly authorized to conduct business in the State of Tennessee as UpRight Law LLC . . . in response to the Honorable Suzanne H. Bauknight's Order of April 27, 2017 to Appear and Show Cause why the attorneys' fees paid in this case do not exceed the reasonable value of services within the meaning of 11 U.S.C. § 329(b), and in support thereof respectfully states as follows:
>
> . . . .
>
> 5. That Accounting of Services reduces the contractually-stipulated rates to the following hourly rates:
>
> - Tennessee-licensed attorneys - $250.00
> - Attorneys licensed outside of Tennessee - $150.00
> - Non-attorney Staff - $50.00
>
> 6. All entries of events were recorded contemporaneously with their occurrence.
>
> 7. For some tasks, the amount of time required to complete the tasks was recorded contemporaneously with the occurrence of that task. Such entries are noted on the Accounting of Services as having been kept "contemporaneously."[2]
>
> 8. Some records did not include the amount of time when the event was recorded contemporaneously. For those entries, the amount of time for such event has been reduced to 0.1 hours.

[1] The "Total Value of Services" shown on the Accounting is $2,275.00; however, that number is incorrect. The actual total value of "time" multiplied by the "rate" shown on the Accounting is $2,025.00. Notably, the $335.00 filing fee is included in the "value" column. [Doc. 37-1.]

[2] The Court discovered at the July 13, 2017 hearing that this statement was false. *See* discussion *infra*.

[Doc. 37.]

The Accounting includes eleven columns: File Name, Date/Time, Person, Position, Rate, Type, Subject, Comment Summary, Time, Value, and Time Kept Contemporaneously. [Doc. 37-1.] Debtor's name fills every row in the File Name column. The Date/Time column lists the date and time of each individual service. The Person column lists which employee of UpRight Law performed the task, the Position column lists what position each Person holds within UpRight Law, and the Rate column lists the hourly rate for each Person. The Type column states what kind of service was provided – for example, whether it was a call, email, note on file, etc. – and the Subject column builds on the Type column by stating who made the call, who authored the email, what the note on the file was about, etc. Listed in the Comment Summary are further explanations concerning the Type and Subject descriptions. The Time column includes the time assigned for the task, and the Value column is the monetary amount of the listed Time multiplied by the Rate for each Person. Finally, each row in the Time Kept Contemporaneously column consists of either "yes" or "no" and purports to advise the Court whether the Person billing the service kept his or her time contemporaneously.[3]

On July 6, 2017, the United States Trustee filed the U.S. Trustee's Reply to the Response of Elliott Schuchardt to Order to Appear and Show Cause ("UST Response") [Doc. 38], through which he argued that the fees charged by Schuchardt and UpRight Law in this case were unreasonable in light of the actual work required and performed for Debtor and the customary fee charged by other local attorneys in similar cases.

[3] As will be discussed in more detail, notwithstanding that some entries were marked with "yes," Schuchardt acknowledged during the July 13 hearing that, in fact, none of the time records in this case that are listed on the Accounting were kept contemporaneously.

On July 13, 2017, the Court held a final hearing on the Show Cause Order, at which Schuchardt appeared, answered the Court's questions concerning the Accounting and his fees in other cases, and argued in favor of the fee charged. The attorney for the United States Trustee was also present and argued that the fee charged was excessive and that the excessive portion should be disgorged to Debtor. At the conclusion of the hearing, the Court found that the amount charged to Debtor was not reasonable and took the matter under advisement to determine a more appropriate fee.[4]

II. Analysis

A. Statutory Standard for Reasonable Fee

11 U.S.C. § 329(a) requires that "[a]ny attorney representing a debtor in a case under this title, . . . whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid." This compensation must be "reasonable compensation for actual, necessary services rendered by the . . . attorney and by any paraprofessional person employed by any such person," 11 U.S.C. § 330(a)(1)(A). "If any such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive," either to the estate – if the payment would have been property of the estate – or to the person who made the payment (usually the debtor). 11 U.S.C. § 329(b). The Court, either on its own motion or by motion of a party in interest – including the United States Trustee or Chapter 7 or 13 trustees – may award fees "less than the amount of compensation that is requested." 11 U.S.C. § 330(a)(2).

[4] The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this District. This is a core proceeding that the Court may hear and determine. 28 U.S.C. § 157(b)(1), (2)(A). The following opinion shall constitute findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

Sixth Circuit Court of Appeals Chief Judge Guy R. Cole, Jr. explained the policy underlying § 329(b) when he was a Bankruptcy Judge in the Southern District of Ohio:

> The policy underlying the enactment of § 329(b) was aptly described by Judge Brody in *Matter of Olen*, 15 B.R. 750 (Bankr. E.D. Mich. 1981), wherein the court stated:
>
> > Section 329(b), derived from section 60d of the Bankruptcy Act and Bankruptcy Rule 220(a), provides that the court may examine into [sic] the reasonableness of compensation paid by a debtor to an attorney for services rendered or to be rendered in contemplation of filing a bankruptcy proceeding and may order the return of any part of that payment to the extent it is excessive. "It matters very little to a bankrupt whether his attorney fee is large or small, since it will be paid out of the assets which, in any event, would normally be consumed in distribution." Committee on the Judiciary, House of Representatives, Report on H.R. 2833 (An Act to Amend Subdivision d of Section 60 of the Bankruptcy Act). H.R. Rep. No. 88–99, 88th Cong., 1st Sess., *reprinted in U.S. Code Cong. and Admin. News* 88th Cong., 1st Sess. 638 (1963). In this context, the need for judicial scrutiny of legal fees paid to an attorney for a debtor contemplating bankruptcy, becomes self-evident.
>
> 15 B.R. at 751-52 (citations omitted). *See also, In re Smith*, 48 B.R. 375, 378 (Bankr. C.D. Ill. 1984) ("Section 329 reflects Congress' concern that payments to debtors' attorneys could jeopardize the relief accorded to creditors and could encourage overreaching by debtors' attorneys."); *In re Whitman*, 51 B.R. 502, 506 (Bankr. D. Mass. 1985) (strict scrutiny of the compensation of debtors' counsel is warranted due to "the temptation of a failing debtor to deal too liberally with his property in employing counsel" and to avoid the potential for "evasion of creditor protection provisions of bankruptcy laws" and "overreaching by the debtor's attorney").

In re Fullen, 87 B.R. 504, 506 (Bankr. S.D. Ohio 1988). The Court also notes that judicial oversight of fees protects debtors who may be unsophisticated (or, as Galloway put it at the June 8 hearing, "very rural" [Doc. 34 at p. 8]), notwithstanding that such debtors might "independently negotiate" a fee with counsel, as here, apparently [Doc. 34 at p. 13].

To determine what constitutes "reasonable compensation to be awarded," the Court looks first to the following statutory factors:

(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). Compensation is not allowed 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 estate." 11 U.S.C. § 330(a)(4).

As made clear by § 330(a), the Court has a fundamental, independent duty to review compensation paid to attorneys, *see Henley v. Malouf (In re Roberts)*, 556 B.R. 266, 280 (Bankr. S.D. Miss. 2016); *In re Parsons*, No. 02-65780, 2006 WL 3064085, at *2 (Bankr. N.D. Ohio Oct. 24, 2006), a duty that this Court takes very seriously and exercises routinely, and it matters not whether any party in interest has objected or raised the issue. The party requesting fees bears the burden of proving reasonableness. *In re Christenberry*, No. 04-36484, 2007 WL 433247, at *2 (Bankr. E.D. Tenn. Feb. 5, 2007) (citations omitted).

Even when examining whether a presumptive or flat fee is reasonable, courts must first utilize the "lodestar" method, "which is calculated by 'multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended.'" *In re Williams*, 357 B.R. 434, 438

(B.A.P. 6th Cir. 2007) (citing *Boddy v. United States Bankr. Court (In re Boddy)*, 950 F.2d 334, 337 (6th Cir. 1991)).

> "The primary concern in an attorney fee case is that the fee awarded be reasonable, that is, one that is adequately compensatory to attract competent counsel yet which avoids producing a windfall for lawyers." *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 1999) (citing *Blum v. Stenson*, 465 U.S. 886, 893, 897 (1984)). To arrive at a reasonable hourly rate, courts use as a guideline the prevailing market rate, defined as the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record. *Adock–Ladd v. Sec'y of Treasury*, 227 F.3d 343, 350 (6th Cir. 2000).

Geier v. Sundquist, 372 F.3d 784, 791 (6th Cir. 2004).

In its analysis of the actual time records submitted to determine the lodestar fee, a court may consider factors such as how the time records were kept, whether tasks are lumped, and whether the bill includes administrative or clerical tasks. *See In re Williams*, No. 05-68109, 2007 WL 1875992, at *2 (Bankr. N.D. Ohio June 27, 2007).

> Once the lodestar figure is established, the trial court is permitted to consider other factors, and to adjust the award upward or downward to achieve a reasonable result. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). In considering any adjustment, the Supreme Court has cited with approval the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *Hensley*, 461 U.S. at 430 n.3, 434 n.9. Those factors are:
>
> > (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.
>
> *Johnson*, 488 F.2d at 717-19. The Supreme Court, however, has limited the application of the *Johnson* factors, noting that "many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." *Hensley*, 461 U.S. at 434 n.9.

Geier, 372 F.3d at 792.

B. Reasonable Hourly Rate

The lodestar analysis requires the Court to first determine a reasonable hourly rate, which "is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *In re Williams*, 357 B.R. at 438-39 (quoting *Blum*, 465 U.S. at 895-96 n.11). "Bankruptcy attorneys are generally entitled to a hourly fee in line with the prevailing market rates in the community. The Court may, itself, determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys' hourly rates." *In re New Boston Coke Corp.*, 299 B.R. 432, 446 (Bankr. E.D. Mich. 2003) (citations omitted).

Schuchardt's Response reflects that the following hourly rates were "billed" in this case: $250.00 for attorneys licensed in Tennessee; $150.00 for attorneys licensed outside of Tennessee; and $50.00 for non-attorney staff. As for his experience, Schuchardt stated that he has been doing bankruptcy work for twenty-five years and has filed "close to" 300 cases in that time.[5] [Doc. 42 at p. 18.] Schuchardt does not hold any legal specializations. [Id.] Schuchardt stated that he has not represented bankruptcy clients in the Eastern District of Tennessee at an hourly rate but that he represented a Chapter 11 debtor in the Western District of Pennsylvania from 2013 to 2017 at a rate of $200.00 per hour. [*Id.* at p. 24.] He also stated that his typical alternative hourly rate for personal injury representation on a contingency basis "would be about $250.00." [*Id*.]

The Court asked Schuchardt to describe the difference between bankruptcy cases in which he represents the debtors in his solo practitioner capacity and those in which he represents the debtors as an attorney with UpRight Law. Specifically, the Court inquired about what is

[5] This averages to twelve cases per year.

different in his handling of the clients from the moment he receives the handoff from UpRight Law staff in Chicago, and he stated that "the legal work is exactly the same." [Doc. 42 at p. 28.] The Court then queried: "So if the legal work that you are doing as an UpRight partner and the legal work that you are doing as Schuchardt Law Firm are identical, . . . why should there be a higher hourly rate for the UpRight cases." [*Id.*] Schuchardt answered, "Because my hourly rate is worth every bit of what UpRight is charging and I would submit that it's worth significantly more." [*Id.*] The Court next asked, simply, "Why?" [*Id.*] Schuchardt then merely repeated his earlier answer, stating "if you were to look at my record as an attorney, I am worth what UpRight charges. UpRight has reduced its fees for local partner attorneys to $250.00 per hour. I submit, respectfully, that I am worth significantly more than $250.00 per hour." [*Id.* at pp. 28-29.]

The Court also questioned Schuchardt about Sarah Cotterell, an UpRight Law "Associate Attorney," who deals with prospective debtors before they are transferred to Schuchardt to file, according to the Accounting. The Accounting shows an hourly rate for Cotterell of $250.00 per hour. Schuchardt advised the Court that he thought Cotterell was a staff person rather than an attorney and he did not know whether she was licensed to practice in the State of Tennessee. [Doc. 42 at p. 19.] A search for Cotterell on the website for the Board of Professional Responsibility of the Supreme Court of Tennessee (www.tbpr.org) reflects that she was licensed by the State of Tennessee in 2015.[6]

In connection with the issue of the appropriate hourly rate, the Court has conducted its own independent review of attorneys' fees and rates charged by debtors' attorneys in this community, both hourly and as a flat fee, paid prepetition. This review has revealed to the Court

[6] The Court asked Schuchardt if he had any objection to the Court looking for this information on the Board of Professional Responsibility's website, and he did not. [Doc. 42 at p. 20.] Accordingly, the Court takes judicial notice of this fact pursuant to Rule 201 of the Federal Rules of Evidence.

that, in Chapter 7 cases, attorneys with comparable experience to Schuchardt routinely charge between $175.00 and $235.00 an hour, decidedly less than $250.00 per hour reflected in Schuchardt's Response. In addition, this Court has previously stated that it will not allow attorneys to charge debtors a fee in excess of $250.00 per hour for routine Chapter 7 bankruptcy cases. *See, e.g.*, *In re Stevens*, No. 16-33358, Doc. 19 (Bankr. E.D. Tenn. Nov. 18, 2016) (order striking fees and limiting compensation with the directive that "[c]ounsel may not charge hourly rates *exceeding* $250.00 for attorneys and $95.00 for paraprofessionals" (emphasis added)). The Court's analysis also revealed that even the most experienced attorneys, including those who serve as Chapter 7 trustees, have been in practice for decades, and perform significant Chapters 11 and 13 work in addition to Chapter 7 work, do not charge more than $275.00 per hour when representing themselves or others as Chapter 7 trustees in asset cases (although the Court could find no case in which such attorneys charged that hourly rate to Chapter 7 debtors).

Were the Court to award fees based on an hourly rate, it would allow no more than $200.00[7] per hour for Schuchardt's legal work, no more than $150.00 per hour for Cotterell's legal work, and no more than $50.00 per hour for legitimate *paraprofessional* (as opposed to staff/clerk/secretarial) work.[8] The Court does not believe that Schuchardt's representation of Debtor in this routine Chapter 7 case warrants an additional $50.00 per hour over his previously billed rate in Pennsylvania, even if the Court might deem a higher rate appropriate in some cases based on the difficulty of the case and other factors.

[7] Assigning an hourly rate of $200.00 per hour to Schuchardt's representation of Chapter 7 debtors before this Court is generous given that he was paid only $200.00 per hour for Chapter 11 work in the Western District of Pennsylvania, which is headquartered in Pittsburgh, a much larger (and presumably more expensive) legal market than Knoxville.

[8] Also appearing in the Accounting in this case is Edwin Shoemaker, a local attorney who previously was affiliated with UpRight Law. The Accounting purports to bill Mr. Shoemaker's time at $250.00, but the Court does not find it necessary to determine an appropriate rate for Mr. Shoemaker because the description of his time reflected in the Accounting (*i.e.*, "[s]tage was changed to waiting on Contract") unquestionably is non-compensable administrative time. *See* discussion *infra*.

This case, however, was entirely routine. Debtor was unemployed with net monthly income of $2,600.00[9] from "Severance pay – ends 2/28/17."[10] [Doc. 1.] She owned real property valued at $105,000.00 that was subject to a mortgage in the amount of $112,496.03, and she valued her personal property at $20,530.00 in Schedule A/B. [Doc. 1.] Pursuant to her Statement of Intention, Debtor intended to surrender her real property and reaffirm her automobile. [Doc. 4.] Debtor's only secured debts were her mortgage and the debt on her vehicle. She had no unsecured priority debt and $41,026.72 unsecured nonpriority debt. [Doc. 1.] The Chapter 7 Trustee filed a No-Asset Report on April 6, 2017 [Doc. 14], two days after her meeting of creditors [*see* Doc. 10], and Debtor received her discharge on June 16, 2017 [Doc. 26], a mere 42 and 113 days, respectively, from the petition date.

Furthermore, as previously stated, the maximum hourly rate the Court will approve for representation of a debtor in a routine Chapter 7 bankruptcy case is $250.00; however, the maximum is not the norm, and the Court must find that there are extenuating factors to substantiate an increased rate.

It matters not in this case, however, because the Accounting reflects time records that were not kept contemporaneously. Indeed, Schuchardt acknowledged as false the indication in the Accounting submitted to the Court that the time was kept contemporaneously:[11] "For these seven cases, I did not, I did not log in the actual amount of time. So the, the time that we've included here is, is an estimate of, of the amount of time that we believed the particular task

[9] Debtor's Schedule I was amended on March 13, 2017, to reflect severance pay of $2,756.00.

[10] Debtor's electronic signatures on the statements and schedules are dated February 17, 2017, and the case was filed on February 23, 2017. [Doc. 1.]

[11] The Court notes that the column in the Accounting is titled "Time Kept Contemporaneously" not "services recorded contemporaneously." Thus, the document unquestionably was misleading.

would have taken." [Doc. 42 at pp. 10-11.] The task was recorded contemporaneously, but the time for completing the task was not. [*Id.*] Thus, the Court will not rely on the Accounting to determine an appropriate fee based on an hourly rate.[12]

C. Actual, Necessary Services

Because the Court awards fees only "for actual, necessary services by the . . . attorney and by any paraprofessional person employed by any such person," 11 U.S.C. § 330(a)(1), time records are to be closely scrutinized, and vague, lumped, duplicative, or administrative/clerical entries, as well as time expended to correct attorney or staff errors, are non-compensable. *See, e.g., In re D&H Machine Serv., Inc*., 557 B.R. 609 (Bankr. E.D. Tenn. 2016).

The Accounting reflects the following purported billable services:

Type	Subject	Comment Summary	Time	Value	Time Kept Contemporaneously
Email	Email to client	Prepared & Sent Reaffirmation Agreement	1.0	$ 250.00	Yes
Hearing	341 hearing	Attended 341 hearing	1.0	$ 250.00	Yes
Call	Call to client	341 meeting prep call	0.3	$ 45.00	Yes
Prepare	File	Prepare and File Cover Sheet for Amended CMI	0.6	$ 150.00	Yes
Prepare	Conference	Conference with client; prepare and file Amended CMI	1.1	$ 275.00	Yes
Fee	Fee Paid	Filing Fee	0.0	$ 335.00	Yes
Note on File	Case File Stage Change	Filed case; updated case information in database.	0.6	$ 150.00	Yes
Meeting	In person meeting	Conference with client; prepare petition and schedules	1.8	$ 450.00	Yes
Note on File	In person meeting	Set meeting for 2/17/17	0.1	$ 25.00	No
Call	Call to client	Document collection	0.3	$ 75.00	Yes
Email	Email to Partner Attorney	Handoff email	0.1	$ 15.00	No
Note on File	Case File Stage Change	Changed Stage to Partner Handoff Complete	0.1	$ 15.00	No
Email	Email to client	Document collection	0.1	$ 15.00	No
Call	Call to client	Partner handoff call	0.5	$ 75.00	Yes
Note on File	Case File Stage Change	Stage was changed to waitning for PIF call	0.1	$ 5.00	No
Call	Call from Client	Called to PIF	0.1	$ 5.00	No
Note on File	Case File Stage Change	Changed Partner Attorney to Elliott Schuchard	0.1	$ 5.00	No
Call	Call to client	Partner attorney reassignment	0.1	$ 5.00	No
Call	Call from creditor	Creditor Verification	0.1	$ 5.00	No
Call	Call from client	Changed monthly payments to the 15th of each month	0.1	$ 5.00	No
Note on file	Changed status	Changed marital status to divorced	0.1	$ 25.00	No
Note on File	Case File Stage Change	Stage was changed to waiting on Payments	0.1	$ 5.00	No
Note on FIle	Case fFile Stage Changed	Stage was changed to waiting on Contract	0.1	$ 25.00	No
Note on File	Case File Stage Change	Stage was changed to waiting on approval and contract	0.1	$ 15.00	No
Note on file	Changed Partner attorney	Intake reviewed and approved	0.3	$ 45.00	Yes
Note on File	Case File Stage Change	Stage was changed to assign partner attorney	0.1	$ 5.00	No
Call	Call to client	Consultation, Case File Set-up	1.6	$ 80.00	Yes
Call	Call to client	Intake call	0.1	$ 5.00	No

[12] Further, as discussed below, the overwhelming majority of items in the Accounting, which was offered to show that Schuchardt and UpRight Law earned the fee charged pre-petition, are non-compensable.

Courts consistently hold that attorneys may not bill for administrative and/or clerical services under any circumstance, irrespective of the person who performed the task. *See, e.g., In re ACT Mfg., Inc*., 281 B.R. 468, 485 (Bankr. D. Mass. 2002) ("[T]ime spent by certain types of individuals should ordinarily not be included in a fee application. This includes time spent by non-paid interns, summer associates, and staff whose salaries can ordinarily be viewed as part of a firm's overhead compensated via the rates of the firm's professionals and paraprofessionals"). This prohibition has been long-standing in this Court:

> Furthermore, "[s]ecretarial work, overtime work and word processing costs are not compensable[.]" *In re Thermoview Indus., Inc.*, 341 B.R. 845, 847 (Bankr. W.D. Ky. 2006).
>
> > Fees for services that are purely clerical, ministerial, or administrative should be disallowed regardless of who performs them. If the services represent a shift of tasks ordinarily performed by a lawyer, such as would require discretion, then the services are compensable. If they consist of typing, data entry, checking court dockets, manually assembling, collating, marking, processing, photocopying, mailing, compiling, organizing in numerical or alphabetical order, updating a database, numbering, printing, preparing packages for service, or similar tasks, the services are clerical in nature. Performing these services or supervising them is not compensable.
>
> *In re Schneider*, No. 06–50441, 2007 WL 2688812, at *4 (Bankr. N.D. Cal. Sept. 13, 2007) (citations omitted).

In re Jones, No. 08-30294, 2008 WL 4552370, at *3 (Bankr. E.D. Tenn. Oct. 6, 2008); *see also In re Nelson*, No. 16-22089-beh, 2017 WL 449581 (Bankr. E.D. Wis. Feb. 1, 2017) ("[W]ork that is clerical or secretarial in nature, *regardless of who performs it*, should be treated as an overhead expense and [is] not separately recoverable. Clerical tasks include 'typing, data entry, checking court dockets or court dates, manually assembling, collating, marking, processing, photocopying, [and] mailing documents,' and 'updating claim registers and databases.'" (quoting *In re Brennan*, No. 12-71327, 2013 WL 4046447, at *7 (Bankr. C.D. Ill. Aug. 8, 2013) (emphasis added))).

Because it is clerical or administrative, this Court also considers non-compensable each of the following: changing "stages" of an account's status; changing monthly payments to the 15th of each month; changing partner attorney assignment; payment calls with the client; and "handoff" calls and emails – which Schuchardt explained occur between the local attorney and either a staff person or an attorney in Chicago to advise when all payments have been made and the case is ready for the local attorney to begin working on the case.

Based on the time records supplied in this case, the following entries reflect administrative/clerical time that will never be compensable:

• 8/24/16	Note on File	Stage was changed to assign partner attorney	0.1
• 8/24/16	Note on file	Intake reviewed and approved	0.3
• 8/24/16	Note on File	Stage was changed to waiting on approval and contract	0.1
• 8/24/16	Note on File	Stage was changed to waiting on Contract	0.1
• 8/24/16	Note on File	Stage was changed to waitng [*sic*] on Payments	0.1
• 10/26/16	Note on File	Changed marital status to divorced	0.1
• 11/2/16	Call	Changed monthly payments to the 15th of each month	0.1
• 1/20/17	Call	Partner attorney reassignment	0.1
• 1/20/17	Note on File	Changed Partner Attorney to Elliott Schuchardt	0.1
• 2/15/17	Call	[Client] Called to PIF[13]	0.1
• 2/15/17	Note on File	Stage was changed to waiting for PIF call	0.1
• 2/15/17	Call	Partner handoff call	0.5
• 2/15/17	Note on File	Changed stage to Partner Handoff Complete	0.1
• 2/15/17	Email	Handoff email [to Partner Attorney]	0.1
• 2/15/17	Note on File	Set meeting for 2/17/17	0.1
• 2/23/17	Note on File	Filed case; updated case information in database	0.6

[Doc. 37-1.] Thus, of the 10.7 *estimated* hours reflected in the Accounting, 2.7 hours (or 25.2%) are for purely non-compensable clerical or administrative time.

[13] At the July 13 hearing, Schuchardt confirmed to the Court that "PIF" means paid in full. [Doc. 42 at pp. 15-16.]

Several "lumped" entries are also including in the Accounting for time that could be considered appropriate legal tasks combined with purely clerical and/or administrative tasks that the court would usually either divide in half or strike altogether:

- 8/24/16 Call Consultation; Case File Set-up 1.6
- 3/13/17 Prepare Conference with client; prepare and file Amended CMI 1.1
- 3/13/17 Prepare Prepare and File Cover Sheet for Amended CMI 0.6[14]

Additionally, Schuchardt stated that he does not employ support staff in his Knoxville office such that he meets with clients alone and then he personally prepares the statements and schedules for his clients. While the Court does not doubt that Schuchardt personally performs these tasks, because they are tasks that ordinarily would be billed at a reduced paraprofessional rate, they may not be compensated at the attorney's full hourly rate. Nevertheless, and as previously stated, because the time records were not maintained contemporaneously and the time claimed is based on estimation and conjecture, the Court will not determine the reasonable fee for this case based on a lodestar calculation.[15]

Additionally, in response to the Court's questioning concerning the reaffirmation agreement filed and his billing of an hour for "Email to client . . . Prepared & Sent Reaffirmation Agreement" for a reaffirmation agreement that was, in fact, on the creditor's form and prepared

[14] Notably, the Court does not judge whether the amendments would properly be charged to Debtor. Further, the information for this entry is incorrect. Amended documents were filed by Schuchardt on March 13; however, he did not file the notice of amendment required by E.D. Tenn. LBR 1009-1(b) and was notified by a Memorandum from the clerk's office dated March 14 to do so. Schuchardt subsequently filed a document entitled Notice of Amended Schedules on March 16; however, it did not contain the information required by the Local Rule (that sets forth with specificity the nature and purpose of the amendment being made). The Court notes that Schuchardt has never filed a notice of amendment consistent with the Local Rule in this case, leading the Court to the conclusion that Schuchardt did not actually read the Local Rule for the requirements.

[15] The Court also notes that the time shown in the Accounting for attending the meeting of creditors was estimated without any consideration of the fact that Schuchardt often had multiple cases set for the same morning or afternoon. [Doc. 42 at p. 21.] Even if the Court were to compute a fee based on the speculative time entries at the $200.00 maximum hourly rate (as explained above), the total fee would only be between $890.00 ant $1,100.00 (depending on whether the Court struck or halved the lumped entries), which is between 68.5% and 84.6% of the fee charged to Debtor.

by the creditor, Schuchardt stated that he was "getting up to speed in terms of the form of the reaffirmation agreement that was being used" and that the "process can be shortened in the future, but at least for . . . the first ones, it was somewhat time consuming to complete" because in Pittsburgh, where he previously practiced, reaffirmation agreements were not utilized very frequently. [Doc. 42 at pp. 17-18.] The Court finds this explanation lacking given that the form used by the creditor is Official Form 2400A that has been in use since December 2015, and in light of Schuchardt's representation that he has been practicing as a bankruptcy attorney for more than twenty-five years.[16]

C. Average Fees Charged in Comparable Cases

Because the Court finds the Accounting to be an unreliable measure of the legal work performed in this case, the Court will determine a reasonable fee from a comparison of this case to similar cases filed in this Court division, looking to the fees charged and paid pre-petition in such similarly situated cases.

In support of the higher flat fee charged in UpRight Law cases, Schuchardt argued that UpRight Law "is . . . , by and far, the most successful bankruptcy firm in the United States. They have a platform nationwide that is widely accepted and are filing a significant percentage of the cases nationwide now." [Doc. 42 at p. 26.] He also asserted that this Court's questioning of the fees in this and other cases means that "Tennessee is out of step with the national trend on this particular issue." [*Id.*] Regarding comparison of UpRight Law fees to fees charged in the local legal community, Schuchardt argued that because "UpRight Law is a large filer of bankruptcy cases . . . , it would be appropriate to compare its fees to the local large filers in town." He argued,

[16] A search of the Court's CM/ECF system reflects that, as of August 10, 2017, Schuchardt was attorney of record in 87 bankruptcy cases filed in this District, 38 of which were filed from December 17, 2008, through June 1, 2010, and 49 of which were filed since August 19, 2016.

with no evidentiary support or explanation of his comparative analysis, that he has made that comparison and that the rates charged by UpRight Law are comparable to the "local large filers." [*Id.*] Schuchardt also argued that any comparison between the fees charged by UpRight Law and the fees charged by the Schuchardt Law Firm is like comparing "apples to oranges":

> We're comparing a strong national law firm with a strong marketing effort and a large support staff to a startup which is using [a] completely different marketing strategy. My own firm, the Schuchardt Law Firm, has only been in this market most recently for 11 months and my strategy as an individual attorney is to discount my fees[17] in order to get market share to build goodwill within the community. . . . Here in this area, I had . . . close to a 1 percent market share as of a few months ago. And the way that I do it is by discounting my fees in order to build goodwill."

[Doc. 42 at p. 26.]

The Court agrees with the United States Trustee that the best measure of a reasonable fee under the circumstances here (when it is impossible to apply a lodestar analysis) is to compare fees charged in this market (defined as the Knoxville Court Division) in similarly situated cases. The size of a firm or its marketing initiatives or extensive administrative structure are not appropriate factors for determining a reasonable fee for a particular case. *See* 11 U.S.C. § 330(a)(3).

In support of his argument that the fee charged in this case was not reasonable, the United States Trustee attached two spreadsheets reflecting the results of his office's review of consumer Chapter 7 cases with § 341 meetings held on alternate weeks for the one-year period from June 6, 2016, to June 7, 2017. [Doc. 38 at p. 4, n.1.] For his analysis, the United States Trustee reviewed a total of 484 cases, including both individual and jointly filed cases and both asset and

[17] Indeed, Schuchardt revealed to the Court at the July 13 hearing that he receives only 33% of the total fee charged to debtors by UpRight Law, meaning that in this case, he received only $433.29, which is less than half of the amount that this Court ultimately concludes would be a reasonable fee for legal services performed in this case. No wonder Schuchardt's average fee in UpRight Law cases increased nearly 38% in comparison to fees he charged before becoming affiliated with UpRight Law. *See* discussion *infra*.

no-asset cases, and found that "[t]he average fee across all 484 cases was $1,022.15," the results of which were reflected in the first spreadsheet attached to the UST Response as Exhibit A. [Docs. 38 at ¶ 11, 38-1.] Taking the analysis one step further to provide the Court with a more accurate comparison, the United States Trustee identified sixteen cases that were "similar to the current bankruptcy case, in that the cases were individual cases where the debtors were unemployed, there was real property, there was at least 1 vehicle, and no non-dischargeable debt" and found that "[t]he average fee from those cases was $1,077.75 (with a high of $1,265 and a low of $750)." [Docs. 38 at ¶ 11, 38-2.]

Similarly, the Court recently conducted its own analysis of the average flat fees charged by Chapter 7 attorneys and paid pre-petition, and its numbers fall more in line with the review conducted by the United States Trustee than those asserted by Schuchardt. The Court's review, conducted for cases filed from January 1 through March 31, 2016, reflects that the average flat fee for the sample of 683 no-asset, Chapter 7 bankruptcy cases was $1,036.00. A number of those fees excluded lien avoidance actions, motions for stay relief, and adversary proceedings; however, a few of the fees included all services within the lump sum amount, even adversary proceedings. Regarding the two "local large filer" law firms referenced by Schuchardt during the July 13 hearing [Doc. 42 at pp. 29-30], the Court's analysis reflects that Clark & Washington's average fee was $962.00 and Mayer & Newton's average fee was $1,087.00. These averages reflect to the Court that the high-volume filers in this market oftentimes reduce the fees charged to debtors when there is a severe financial burden or the case itself is so routine that it would be unconscionable to charge a higher rate.

The Court has also performed an analysis of Schuchardt's fees across time. Before his affiliation with UpRight Law, Schuchardt charged an average fee of $927.00 between August

2016 and January 2017. Immediately following his affiliation with UpRight Law, for the cases he has filed as a solo practitioner from February 2017 through June 2017,[18] Schuchardt charged an average fee of $1,128.00, an increase of $201.00, which computes to an increase of 21.7%. For the cases Schuchardt has filed on behalf of UpRight Law between February 2017 and July 31, 2017, the average fee was $1,289.00, an increase of $362.00 from his individual, pre-UpRight Law rate – an increase of nearly 39%.

Because the average fee from the United States Trustee's larger (and, thus, more accurate) sampling more closely resembles the Court's independent analysis, the Court finds that the average fee of $1,077.75 in similar cases is a reasonable fee for representation by extremely competent and experienced local attorneys in no-asset, routine Chapter 7 bankruptcy cases like this one. Giving Schuchardt the benefit of the doubt as to his competency,[19] the Court finds that a reasonable fee for this case under § 330 is $1,100.00.

[18] Until very recently, Schuchardt had not filed any additional no asset Chapter 7 bankruptcy cases through Schuchardt Law Firm since June 27, 2017. He filed one additional case on August 10, 2017 (*Bradford A. Barham and Amy Lavoll*, No. 3:17-32493-SHB), but the Court did not include the fee charged in that case ($1,150.00) in the average fee calculations discussed herein.

[19] Many of Schuchardt's filings have required corrections to statements and schedules and reflect other errors that an experienced practitioner should not make. *See, e.g.*, *In re Troy and Ashley Sensaboy*, No. 3:17-bk-30753-SHB (in which Schuchardt (1) had to file a motion to restrict access because he failed to redact personal information from pay advices, which motion was filed incorrectly under the local rules [Docs. 13, 16], (2) filed and withdrew a motion to waive the debtor-husband's appearance at the meeting of creditors [Docs. 29, 36], and (3) argued at the hearing on the United States Trustee's motion to dismiss the debtor-husband for failing to appear at the creditors' meeting that the United States Trustee was uncooperative with Schuchardt's request that the debtor-husband be allowed to appear telephonically at the § 341 meeting when only the Court can excuse a debtor from personal appearance at the § 341 meeting); *In re Jennifer Annable*, No. 3:17-bk-30681-SHB (in which Schuchardt (1) had to amend Form 122A-1 [Doc. 12], (2) had to file a motion to restrict access because he failed to redact personal information from pay advices and failed to comply with the local rule for the motion [Docs. 14, 15], and (3) had to amend Schedule I and Form 106Sum, presumably because the information was incorrect when compared to the pay advices, and failed to correctly list the amended documents such that the clerk had to modify the docket entry [Docs. 7, 38]); *In re Phillip and Juanita Bennett*, No. 3:17-bk-30421-SHB (a Chapter 13 case in which Schuchardt committed multiple errors in filings [Docs. 49, 50, 51, and 5/2/17 corrective docket entry] and failed to appear at a hearing [Doc. 46], after which he filed a response to the Chapter 13 Trustee's objection to confirmation, wrongly and unprofessionally arguing that the trustee should have continued the confirmation hearing until after the claims bar date "so that the parties could put together a meaningful plan," and calling the trustee's objection a "nuisance objection" for issues that were "premature," which ignores the process established by the local rules for objecting to confirmation of Chapter 13 plans and counsel's obligation to properly represent clients before this Court [Doc. 48]); *In re Steven Payne*, No. 3:17-bk-30407-SHB (in which the schedules and statements contained numerous inaccuracies and Schuchardt's attempt to correct the errors

Accordingly, UpRight Law shall be required to disgorge to Debtor a refund of $200.00.

III. Conclusion

For the foregoing reasons, the Court directs the following:

1. An appropriate fee for this no-asset Chapter 7 bankruptcy case is $1,100.00.

2. UpRight Law shall disgorge $200.00 to Debtor no later than August 31, 2017, and certify same under penalty of perjury no later than September 5, 2017.

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was insufficient, causing the United States Trustee to have to file a motion to extend the deadline to object to discharge [Doc. 22]).