

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:) Bankr. No. 21-40170
) Chapter 7
BOBBI JO QUIGLEY)
SSN/ITIN xxx-xx-4487) DECISION RE: REVIEW OF DEBTOR'S
) ATTORNEY'S FEE UNDER § 329(b)
Debtor.)

The matter before the Court *sua sponte* is a review under 11 U.S.C. § 329(b) of the reasonableness of the fee Attorney Eric John Ronke charged Debtor Bobbi Jo Quigley for his bankruptcy-related services. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.Rs.Bankr.P. 7052 and 9014(c). For the reasons discussed below, the Court finds Attorney Ronke failed to file an accurate Disclosure of Compensation and the fee for his post-petition services was not reasonable. The Court will not order Attorney Ronke to disgorge any portion of his fee in this case but will instead direct him to make certain revisions to his practice to ensure his chapter 7 Disclosures of Compensation are accurate, his chapter 7 attorney fees are reasonable, and his chapter 7 practice fully comports with 11 U.S.C. § 707(b)(4)(C), Fed.R.Bankr.P. 9011(b), and the SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT.

I.

Debtor Bobbi Jo Quigley filed a chapter 7 petition on June 1, 2021 at 11:08 a.m. (Central) with the assistance of Attorney Eric John Ronke. On the same day, beginning at 12:28 p.m. (Central), Attorney Ronke filed, in quick succession, Debtor's certificate regarding her completion of the required pre-petition counseling,

Debtor's schedules and statements, and his Disclosure of Compensation.

In his Disclosure of Compensation, Attorney Ronke stated he was charging Debtor a flat fee of \$2,400.00 and he had received \$45.00 pre-petition for a cost.¹ He stated the legal services he agreed to perform were the:

- a. [a]nalysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. [p]reparation and filing of any petition, schedules, and statements of affairs;
- c. [r]epresentation of the debtor at the meeting of creditors[.]

In his Disclosure of Compensation, Attorney Ronke further stated (emphasis added):

By agreement with the debtor(s), the above-disclosed fee does *not* include the following services:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding and representation and advisement on reaffirmation agreements.

In paragraph 6 of his disclosure, Attorney Ronke stated²:

¹ Though the Disclosure of Compensation at line 1.(b) directs the attorney to include the filing fee as a cost, Attorney Ronke did not include it.

² In the Disclosure of Compensation, Attorney Ronke also stated:

7. Counsel has a recourse line of credit from a third-party lender secured by (among other things) a collateral assignment of the accounts receivable of counsel, including amounts owed by Debtor(s) to counsel. Counsel's obligation to repay this indebtedness is not contingent upon receipt of payment from Debtor(s). Counsel may draw upon the line of credit based upon the value of accounts receivable, including the amount owed by Debtor(s) to counsel. The lender also provides payment management and processing services and will collect installment payments from Debtor(s) as well as any third-party guarantor (if applicable) on behalf of counsel. Lender will apply amounts paid by Debtor(s) against counsel's indebtedness to Lender. Counsel has fully informed Debtor(s) and obtained consent to the collateral assignment and

Debtor and counsel have entered into two, separate fee agreements:

- a. The first agreement was signed prior to the filing of the petition for the preparation and filing of the bankruptcy petition, statement about social security number, creditor list and other documents required at the time of filing; and review, analysis and advisement of the typical matters that are required to be performed prior to filing by a bankruptcy attorney under the applicable bankruptcy and ethical rules. Counsel's fees under the first agreement were \$0.00, of which \$0.00 was paid and the balance (if any) was waived by counsel, and costs of \$45.00, of which \$45.00 was paid and the balance (if any) was waived by counsel.
- b. The second agreement was signed after the petition was filed for post-petition work to be performed, including the preparation of schedules of assets and liabilities, and statement of financial affairs; preparation and filing of other required documents; representation at the first meeting of creditors; and other services outlined in the fee agreement. Counsel's fees under the second agreement are \$2,400.00 plus \$156.00 sales tax. The second agreement allows the Debtor(s) to pay these post-petition fees and costs in installments for up to 12 months following the bankruptcy filing.

His statement in paragraph 6.a. that his "review, analysis and advisement of the typical matters that are required to be performed prior to filing by a bankruptcy attorney under the applicable bankruptcy and ethical rules" was free conflicted with his earlier statement in paragraph 4.a. that his \$2,400.00 flat fee included his

to a limited sharing of information with lender concerning Debtor(s) to facilitate counsel's financing and lender's payment management and processing concerning Debtor(s).

The Court has not *sua sponte* raised in this case any issues particular to Attorney Ronke's relationship with and use of the financing company. *See, e.g., In re Kolle*, Bankr. No. 17-41701-CAN, 2021 WL 5872265 (Bankr. W.D. Mo. Dec. 10, 2021); *In re Baldwin*, Bankr. No. 20-10009(1)(7), 2021 WL 4592265 (Bankr. W.D. Ky. Oct. 5, 2021). These issues will need to be addressed in a future case, preferably with the involvement of the United States Trustee, whose investigative resources and experience regarding these issues in other districts may prove to be helpful. *See, e.g., infra* notes 16 and 18.

"[a]nalysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy[.]" In his Disclosure of Compensation, Attorney Ronke did not further identify the "other services outlined in the fee agreement" referenced in paragraph 6.b.

Only 80 minutes elapsed between the time Debtor's petition was filed and the time Debtor's schedules and statements were filed. That left minimal time for Attorney Ronke to have prepared the schedules and statements post-petition, as his Disclosure of Compensation indicated he would.

According to Debtor's schedules, Debtor did not own any real estate. Debtor valued her personal property at \$11,318.00 and claimed it all exempt. Debtor scheduled one secured creditor whose claim was secured by her vehicle. Debtor did not schedule any priority claims. Debtor scheduled 29 general unsecured creditors whose claims totaled \$70,809.13. Debtor scheduled her income at \$2,518.00 per month and stated her monthly disposable income was \$12.03. She scheduled two adult dependents.

On August 25, 2021, the Court entered an order *sua sponte* setting a deadline for Attorney Ronke to file: (1) a copy of his pre-petition fee agreement with Debtor; (2) a copy of his post-petition fee agreement with Debtor; (3) an itemization of the bankruptcy-related services he rendered for Debtor pre-petition; and (4) an itemization of the bankruptcy-related services he rendered for Debtor from the petition date through September 30, 2021. In the order, the Court stated upon receipt and review

of Attorney Ronke's documents it would, if necessary, set a hearing under § 329(b). Attorney Ronke sought and received one extension of the deadline because an attorney helping him respond had a medical emergency.

As his response to the deadline order, Attorney Ronke filed a 26-page brief. The topics he covered were "Bifurcation is an Important Option for Debtors Who Cannot Afford to Pay a Traditional, Up-Front Fee to Hire an Attorney to File a Chapter 7 Case," "There Is Extensive and Compelling Case Law Allowing Bifurcation," "Structure of the Work, Reasonableness of Fees and Use of Third-Party Financing," and "Counsel's Post-Petition Fee in the Bifurcated Cases Is Reasonable." He did not cite any case law from the Eighth Circuit.

On page 4 of his brief, Attorney Ronke stated (emphasis added): "Payments made by the [debtors] are for *earned* fees and are not advance payment for future services." The Court was unable to verify the veracity of this statement in Attorney Ronke's two fee agreements with Debtor, discussed below. On page 5 of his brief, Attorney Ronke stated (emphasis added):

In this case, debtor originally was offered the option of prepaying \$1,800 for Counsel's services (plus the filing fee and other out-of-pocket costs), or bifurcating her engagement in which case Counsel would *waive any fee for pre-filing services* and charge a total of \$2,400 for Counsel's post-filing services (again, plus the filing fee and costs). The debtor can then pay the post-petition fee in installment payments for twelve months. She elected to pay over time.

As attachments to his brief, Attorney Ronke filed a copy of his Line of Credit and Accounts Receivable Management Agreement with Fresh Start Funding LLC, his Pre-

Filing Agreement with Debtor signed by her at 2:04 p.m. (Central) on September 30, 2020, and his Post-Filing Agreement with Debtor signed by her at 11:19 a.m. (Central) on June 1, 2021.

The Pre-Filing Agreement divided required, probable, and possible chapter 7 bankruptcy services into one of four categories:

Pre-Filing Services

- Meeting and consulting with you as needed prior to filing your case;
- Analyzing the information from your intake questionnaire and other documents;
- Providing due diligence, legal analysis and legal advice in order to help you make important legal choices and to comply with the bankruptcy code and rules; and
- Preparing and filing your Chapter 7 Voluntary Petition, Statement about Social Security Numbers, Pre-Filing Credit Counseling Certificate and List of Creditors to start your Chapter 7 case.

Post-Filing Services

- Preparing and filing your Statement of Financial Affairs and Schedules;
- Preparing and filing your Means Test calculations and disclosures;
- Conducting a second signing appointment for you to review and sign your statements and schedules;
- Preparing for and attending your Section 341 Meeting of Creditors;
- Administrating and monitoring your case and communicating with you throughout the process;
- Forwarding the debtor documents to the Trustee;

- Reviewing and responding to Trustee requests;
- Reviewing and advising you regarding any motions for stay relief;
- Reviewing and advising you regarding any reaffirmation agreements or redemptions;
- Reviewing and advising you regarding any creditor violations;
- Any legal service required by the local rules; and
- Enrolling you in the 7 Steps to a 720 Credit Score program upon discharge.

Supplemental Post-Filing Services

- Reviewing and advising regarding any turnover demands from the Trustee[;]
- Attending any continued Section 341 Meeting of Creditors;
- Reviewing and advising regarding any 2004 exams and attending related exam;
- Reviewing and advising you regarding any audit by the US Trustee;
- Preparing and filing claims or objections to claims when appropriate;
- Reviewing and advising you regarding any lien avoidance matters;
- Drafting and/or negotiating a reaffirmation agreement and attending any related hearing;
- Preparing and filing any amendments to your statements and schedules; and
- Preparing and filing a motion to reinstate the case.

Excluded Services

Unless provided otherwise in writing below, the following services

are excluded from the work that the Law Firm is agreeing to provide you:

- Representing you in any adversary proceedings, dischargeability actions and other contested bankruptcy matters.
- Representing you in any municipal, county, state or other local jurisdiction court matters.
- Representing you in any tax matters (we recommend you consult with a tax specialist about any tax matters including whether you should delay filing bankruptcy in order to discharge any tax obligations).
- Representing you in any efforts to discharge student loans.
- Pursuing creditors for violations of the automatic stay, discharge injunction or Fair Credit Reporting Act.
- Motions to revoke a discharge.
- Obtaining title reports[.]
- Appeals to the BAP, District Court of Appeals.
- Correcting credit reports[.]
- Negotiating with Check Systems[.]
- Removal of judgments from credit report, court records or property titles.
- Amendments to filed documents resulting from your error.

The Pre-Filing Agreement did not fully explain bankruptcy law terms used therein such as "adversary proceedings," "dischargeability actions," and "contested bankruptcy matters." It also seemingly differentiated between Attorney Ronke's "reviewing and advising" on a particular issue versus his "representing" Debtor on the same issue, though it did not explain the difference.

The Pre-Filing Agreement gave Debtor four options for paying her legal fees. Under the first, entitled "Pay Before You File," Debtor could pay Attorney Ronke \$1,800.00 for the "Pre-Filing Services" and the "Post-Filing Services," as categorized above, the \$335.00 filing fee,³ \$117.00 for sales tax, and \$45.00 for a credit report, for a total attorney fee of \$2,297.00. Debtor could opt to pay the filing fee in installments. The "Pay Before You File" option also provided Debtor had to pay at least \$500.00 before Attorney Ronke would begin work on the case and the balance had to be paid in full before the case was filed. The "Pay Before You File" option further provided Attorney Ronke may perform some of the "Post-Filing Services" pre-petition. Finally, under this option, Debtor would be required to pay additional legal fees of \$250.00 per hour for any services under the "Supplemental Post-Filing Services" category.

The second option, entitled "Layaway Plan," was the same as the first except Debtor would pay the \$2,297.00 over time through automatic deductions from a debit card. Under this option, once the attorney fee was paid in full, Attorney Ronke would commence the case.

The third option was entitled "File Now Pay Later" and was selected by Debtor. Under it, Debtor agreed to pay Attorney Ronke \$45.00 pre-petition to cover the expense of his obtaining a credit report, and under it Debtor indicated she wanted to apply to the Court to pay her case filing fee in installments. Under this option,

³ All four fee payment options listed the chapter 7 case filing fee as \$335.00. However, the filing fee had increased to \$338.00 on December 1, 2020.

Attorney Ronke and Debtor further agreed Attorney Ronke would provide the "Pre-Filing Services" for free and Debtor would pay him \$2,400.00, plus \$156.00 for sales tax, over 52 weeks for the "Post-Filing Services" *and* the "Supplemental Post-Filing Services." To qualify for the "File Now Pay Later" option, the Pre-Filing Agreement provided Debtor had to have an income of at least \$2,130.00—presumably per month—or have a co-signer with an income of at least \$3,000.00 per month. The agreement also contained several disclosures and statements regarding possible conflicts of interest, etc., if Debtor were to select this option and sign the Post-Filing Agreement, including six separate justifications Attorney Ronke offered for the higher fee under this option. The agreement advised Debtor "25% of the fees that [Attorney Ronke's law firm] charges you under this Post-Filing Agreement" would go to the financing company for "its financing, payment management, credit reporting and other services" to Attorney Ronke's law firm. It also advised Debtor that Attorney Ronke's law firm would give the financing company a lien on the amount Debtor would owe and, if Debtor failed to make the payments when due, the financing company could pursue collection against Debtor.

Under the fourth option,⁴ entitled "Third-Party Financing," Attorney Ronke would provide the "Pre-Filing Services" and the "Post-Filing Services" for \$1,800.00, the sales tax would be \$117.00, a credit report would be \$45.00, and the filing fee

⁴ The first, second, and fourth options were slightly more expensive if Debtor and a spouse had been filing jointly. The third option did not set forth a higher attorney fee for a joint filing.

would be \$335.00, for a total attorney fee of \$2,297.00. A third party would be required to complete a separate payment plan agreeing to pay, on Debtor's behalf, the total attorney fee over time, plus 1.5% interest per month, which equates to an annual interest rate of 19.56% (compounded).

Debtor and Attorney Ronke's Post-Filing Agreement set forth the legal services Attorney Ronke agreed to perform post-petition because Debtor selected the "File Now Pay Later" option in the Pre-Filing Agreement. The Post-Filing Agreement used just one category, entitled "The Work Involved to Complete your Chapter 7 Case," to list the services Attorney Ronke agreed to perform post-petition, combining the second and third categories used in the Pre-Filing Agreement. All the services in the second and third categories from the Pre-Filing Agreement were included in the Post-Filing Agreement, plus under the Post-Filing Agreement Attorney Ronke agreed to give notice to Debtor's employer to stop any garnishments. Both agreements contained the same list of "Excluded Services."

In both the Pre-Filing Agreement and the Post-Filing Agreement, Attorney Ronke's agreeing to amend Debtor's schedules and statements was tempered by his not agreeing to amend any documents resulting from Debtor's error. As with the Pre-Filing Agreement, the Post-Filing Agreement did not fully explain bankruptcy law terms such as "adversary proceedings," "dischargeability actions," and "contested bankruptcy matters," and seemingly differentiated between Attorney Ronke's "reviewing and advising" on a particular issue versus his "representing" Debtor on the

same issue, though, like the Pre-Filing Agreement, the Post-Filing Agreement did not explain the difference.

In the Post-Filing Agreement, Debtor opted to pay the post-petition attorney fee in 26 equal bi-weekly payments of \$98.31, which equates to monthly payments of \$213.01, for a total of \$2,556.06. Debtor's schedules I and J show she has disposable income of \$12.03 per month. Debtor's schedule J did not include her monthly payment under the Post-Filing Agreement with Attorney Ronke, and at line 24 of Debtor's schedule J, Debtor did not state her monthly expenses would be increasing post-petition to cover her payments under the Post-Filing Agreement with Attorney Ronke. When the post-filing fee of \$2,556.06 is added to the case filing fee of \$338.00 and the \$45.00 pre-petition expense Debtor paid for a credit report, Debtor's total chapter 7 attorney fee in this case tallied \$2,939.06.

With his brief, Attorney Ronke also filed a Declaration Concerning Reasonableness of Fees. In this document, Attorney Ronke stated he charges \$1,800.00 for a chapter 7 case if the attorney fee is paid in full pre-petition and \$2,400.00 if the attorney fee is paid post-petition. (Both sums are exclusive of costs, including the filing fee and sales tax.) He argued his higher attorney fee for debtors who pay post-petition is justified by the time value of money and, because bankruptcy attorneys on average collect only 71% of their fees based on some statistics he quoted, he would have to charge \$2,520.00 for post-petition cases "to come out even[.]" He also stated in the declaration that he had viewed "the ethics rules and

ABA Opinion No. 484" and based on that review, he could pass on the 25% financing expense from his financing company to a debtor.

Attorney Ronke attached to his declaration the American Bar Association's Formal Opinion 484. The opinion, dated November 27, 2018, dealt with whether an attorney, under several similar scenarios, could refer a client to a fee financing company or broker in which the lawyer did not have an ownership or other financial interest. The opinion did not address bankruptcy-specific issues, including the application of 11 U.S.C. § 526(a)(4).

To the declaration, Attorney Ronke also attached what he described as a summary of the reasonable value, in a chapter 7 case, of mandatory pre-petition work by him, his paralegal, and other staff, which he valued at \$975.00, mandatory post-petition work by him and other staff, which he valued at \$2,320.00, and potential post-petition work by him, which he valued at \$2,600.00.⁵ He also valued a debtor's enrollment in the "720creditscore.com program" with a "lifetime membership" at \$1,000.00.⁶ Thus, he stated he provides \$3,320.00 in value for his mandatory services in a chapter 7 case and the debtor's enrollment in the 720creditscore.com program. He acknowledged the value of the mandatory post-petition work was less

⁵ The mandatory and potential post-petition services Attorney Ronke listed in this attachment to his declaration were similar, but not identical, to the services he listed under "The Work Involved to Complete your Chapter 7 Case" from his Post-Filing Agreement.

⁶ In his declaration, Attorney Ronke first stated his law firm pays for the 720creditscore.com program for every client and then later stated it is covered under the flat fee agreement.

than what he charged a debtor post-petition in a bifurcated fee case, but stated,

considering the value of the various tasks in the Potential Post-Petition Work category that could have arisen[,] the actual fees likely exceed the flat fee in most cases I have filed, not to mention each of the additional reasons for the increased fee below.

Because Attorney Ronke did not file itemizations of the pre- and post-petition services rendered and expenses incurred in Debtor's particular case, the Court set a second deadline for him to do so. In his response filed October 29, 2021, Attorney Ronke stated he does not keep a contemporaneous record of the work he performs because his practice is flat-fee based. Instead, he estimated his pre-petition work in this case totaled 4.8 hours, which included 1.5 hours for reviewing and revising the draft schedules and statements. He estimated his paralegal also spent 3.5 hours pre-petition working on Debtor's schedules and statements and other required documents, including "[m]aking final changes and additions" to them.⁷ Attorney Ronke estimated his post-petition services to date totaled 3.1 hours and included one hour for preparing for and attending the meeting of creditors. He did not list any post-petition services by his paralegal. He acknowledged the value of his "required post-petition work" was \$775.00 (3.1 hours at \$250.00 per hour). He also acknowledged (emphasis added):

Although the debtor in this case signed a prefiling agreement that required us only to prepare a "skeleton" filing (which is, in fact, how the case was commenced), and anticipated that the work described as "Post-Petition Work" work [sic] would only be done pursuant to a separate post-filing agreement that she later signed, *we did prepare a*

⁷ The 0.7 hour of pre-petition services and the 0.3 hour of post-petition services listed by Attorney Ronke for "Staff" are considered overhead. See *In re Overby*, Bankr. No. 89-10129, slip op. (Bankr. D.S.D. Nov. 14, 1990) (Hoyt, J.); *In re Dreps*, Bankr. No. 99-50103, slip op. (Bankr. D.S.D. Aug. 5, 1999) (Hoyt, J.).

draft of the schedules and statements before we filed the case and this activity is denominated as post-petition work in the engagement agreement. We did this out of an abundance of caution to satisfy our diligence requirement. I did, however, review these drafts with the debtor *post-filing*, made last changes, and filed them after the case was commenced. I believe that it is reasonable to attribute the value of the drafting process to the post-petition work for at least two reasons: first, the debtor agreed that this would be post-filing work and understood that she would pay for it under the post-filing agreement; and, second, the debtor did not receive the benefit of this work until after the case was commenced and she had signed the post-filing agreement. If the Court credits the work in preparing the draft of the schedules and statements to the post-filing period, I spent an additional 1.5 hours of time in this activity that would further support my post-petition fee. As noted above, my paralegal also spent significant time in the drafting process.

By a third order, the Court set a deadline for Attorney Ronke to advise the Court whether he wanted an evidentiary hearing regarding the Court's § 329(b) review of his fee. In his response, Attorney Ronke asked the Court to allow him to make that decision or file additional documents regarding his actual post-petition services after the administration of the case was completed and, in particular, after resolution of a pending motion for turnover filed by the case trustee. Via a fourth order, the Court directed Attorney Ronke to advise the Court not later than 10 days after a dispositive order regarding the trustee's turnover motion was entered if he wanted an evidentiary hearing. The case trustee and Debtor submitted an agreed order resolving the trustee's turnover motion on December 16, 2021. That created a deadline of December 27, 2021 for Attorney Ronke to advise the Court if he wanted an evidentiary hearing regarding a review of his fee under § 329(b).

On December 23, 2021, Attorney Ronke filed a "further response." He stated

Debtor's compliance with the turnover order would, in his experience, require his continued involvement. He also said he was recently informed the State of South Dakota may assert it has a claim that is not discharged.⁸ He said he would need to "conduct diligence" on that matter and thereafter may need to file a motion or an adversary proceeding to resolve it. He again asked the Court to defer determining the reasonableness of his fee until the case is closed and he "can fully inform the Court of the services that have been provided and suggest the value that should be attributed to those services."⁹

The case docket indicates the services rendered by Attorney Ronke for Debtor after October 29, 2021 (when he last reported he had provided 3.1 hours of post-petition services) included filing a response to the trustee's motion for turnover, filing a motion to reschedule the hearing on the trustee's motion for turnover, and working with the trustee to submit an agreed order resolving her turnover motion. Nothing in the record demonstrates these additional post-petition services related to the trustee's turnover motion would have required 6.8 hours of Attorney Ronke's time, at \$250.00 per hour, so as to support his flat fee of \$2,400.00 for post-petition services.

⁸ Debtor scheduled the South Dakota Department of Labor as a general unsecured creditor holding a claim for \$1,656.00 arising from "Overpayment of Unemployment[.]" In her schedules, Debtor stated: "Debtor has appealed this and is awaiting a response." The Department of Labor did not timely file a nondischargeability complaint under 11 U.S.C. § 523(a)(2), (4), or (6).

⁹ The Court did not further delay this decision because Debtor has received her discharge, no adversary proceeding or contested matter is pending, Debtor and Attorney Ronke's Post-Filing Agreement excludes from the flat fee any services related to an adversary proceeding and most contested matters, and the Court has determined it will not disgorge any portion of Attorney Ronke's fee in this case.

Moreover, it is unclear whether Attorney Ronke's preparation of Debtor's response to the trustee's turnover motion, his preparation of Debtor's motion to reschedule the hearing on the turnover motion, and his working with the trustee on an agreed order resolving the matter were included or excluded from the post-petition flat fee since Attorney Ronke agreed to "review and advise" Debtor on turnover motions by the trustee but he did not agree to "represent" Debtor on any contested matter. Further, any post-petition services by Attorney Ronke regarding the dischargeability of the State of South Dakota's claim would fall under the "Excluded Services" category and not be included in his \$2,400.00 flat fee for post-petition services. As of the date of this decision, no adversary proceeding or contested matter is pending. This case is not expected to close until later in 2022 or early 2023 to allow the administration of the bankruptcy estate's interest in Debtor's 2021 federal income tax refund.

II.

Section 329(a) of the bankruptcy code provides:

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, 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, if such payment or agreement was made after one year before the date of the filing of the petition, 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). Section 329(a) has broad application. *In re McDonald Brothers Construction, Inc.*, 114 B.R. 989, 995 (Bankr. N.D. Ill. 1990). The disclosure process allows both the Court and the United States Trustee to review all financial transactions

between a debtor and the debtor's attorney—whether the compensation comes from the estate, the debtor, or a third party—since *any* payment to a debtor's counsel or fee arrangement related to the bankruptcy case must be disclosed regardless of its source.

Schroeder v. Rouse (In re Redding), 247 B.R. 474, 477 (B.A.P. 8th Cir. 2000); *In re Land*, 138 B.R. 66, 69-70 (D. Neb. 1992); *McDonald Brothers*, 114 B.R. at 995.

The procedure for filing this required disclosure of compensation is set forth at Fed.R.Bankr.P. 2016(b) and Bankr. D.S.D. R. 2016-1 and Appendices 2L, 2M, and 2N. Rule 2016(b) provides:

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Fed.R.Bankr.P. 2016(b). Congress's rationale for this disclosure is clear.

Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 329 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 39 (1978), U.S.Code Cong. & Admin.News 1978, pp. 5787, 5825, 6285, cited in *McDonald Brothers*, 114 B.R. at 995, and *Land*, 138 B.R. at 69. A fee

application is not a substitute for this disclosure. *Redding*, 247 B.R. at 478 (quoting therein *In re Brandenburger*, 145 B.R. 624, 627-28 (Bankr. D.S.D. 1992)).

Section 329(b) of title 11 provides:

(b) If 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, to –

(1) the estate, if the property transferred –

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

In a nutshell, § 329(b) gives a bankruptcy court the power to review a debtor's transactions with the debtor's bankruptcy attorney, and if the court finds the compensation paid or agreed to be paid exceeds the reasonable value of such services, the court may cancel the agreement or order the return of any fee payment to the extent it was excessive. *Snyder v. Dewoskin (In re Mahendra)*, 131 F.3d 750, 758 (8th Cir. 1997). Compensation may also be disgorged under § 329(b) if an attorney fails to perform the specific services promised to be performed in exchange for certain compensation, *In re Johnson*, 291 B.R. 462, 467 (Bankr. D. Minn. 2003), or performs agreed services that are incomplete or erroneous, *Hale v. U.S. Trustee*, 509 F.3d 1139, 1147 (9th Cir. 2007). A bankruptcy court may disregard the debtor and the attorney's fee agreement in determining the reasonableness of the attorney's compensation. *Brown v. Luker (In re Zepicki)*, 277 F.3d 1041, 1046 (8th Cir. 2002)

(citing *Mahendra*, 131 F.3d at 757). The purpose behind § 329(b) is to prevent overreaching by a debtor's attorney, *Redding*, 247 B.R. at 478, and to protect both the debtor and the debtor's creditors, *Land*, 138 B.R. at 69 (cites therein).

Federal Rule of Bankruptcy Procedure 2017 guides the review of a debtor's attorney's compensation under § 329(b), with subsection (a) governing a review of the attorney fee for pre-petition services and subsection (b) governing a review of the attorney fee for post-petition services. Under both, a bankruptcy court may initiate a review *sua sponte*. The attorney must be given notice and an opportunity for a hearing, Fed.R.Bankr.P. 2017, both of which must be appropriate to the particular circumstances, 11 U.S.C. § 102(1)(A). The bankruptcy court should inform the attorney of the particular objections to the fee so the attorney has a meaningful opportunity to respond with legal arguments or evidence. *Grunau v. Waage (In re Grunau)*, 376 B.R. 322, 329-31 (M.D. Fla. 2007) (citing *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 846-47 (3rd Cir. 1994)). An actual hearing is not necessary if the notice was proper and the debtor's attorney does not request one. 11 U.S.C. § 102(1)(B)(i).

Factors a bankruptcy court may consider in a § 329(b) review of an attorney's compensation are the complexity of the case and the customary legal fee in the community for the same legal services. *Mahendra*, 131 F.3d at 758. The debtor's attorney has the burden to establish the reasonableness of his or her compensation. *Id.* at 757.

Several courts have reviewed a debtor's attorney fee under § 329(b) when an attorney and the debtor enter into one or more agreements to bifurcate the attorney fee based on pre- and post-petition services. Courts considering the propriety of bifurcated contracts in a chapter 7 case have considered the following factors: (1) the viability of the bifurcation structure; (2) the sufficiency of the attorney's disclosures to the debtor and the court; (3) whether the attorney's entire fee is reasonable; and (4) whether the bifurcated agreement is in the client's best interest. *In re Baldwin*, Bankr. No. 20-10009(1)(7), 2021 WL 4592265, at *9 (Bankr. W.D. Ky. Oct. 5, 2021). The decisions vary, in part because some districts have local rules regarding the services a chapter 7 debtor's attorney is required to perform or the information that must be included in the attorney's fee agreement with the debtor.¹⁰ However, these decisions offer substantial commonality regarding a chapter 7 debtor's

¹⁰ The Bankruptcy Court for the District of South Dakota does not have local rules regarding required services by a chapter 7 debtor's attorney or what information must be included in a bankruptcy attorney's fee agreement with the debtor. The Court, however, continues to be guided by *Wolff* and its predecessor, *In re Rosenow*, wherein the Court recognized a chapter 7 debtor's attorney's basic services include analyzing the debtor's financial condition, rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy, preparing the petition and other required documents, and representing the debtor at the § 341 meeting of creditors—all services necessary to aid the debtor in performing his or her duties under the bankruptcy code and for the administration of the case. *Wolff*, slip op. at 3; *In re Rosenow*, Bankr. No. 99-50365, slip op. at 2-3 (Bankr. D.S.D. Feb. 9, 2004) (Hoyt, J.). Though attending the meeting of creditors is obviously a post-petition service, because of the meeting's importance and to encourage the debtor's attorney's presence, the Court has routinely allowed, even encouraged, a chapter 7 debtor to include that service in his pre-petition fee, notwithstanding *Lamie v. United States Trustee*, 540 U.S. 526 (2004). In contrast, the attorney fee for preparing any documents *after* the petition has been filed and filing them, including schedules and statements, must be paid by the debtor post-petition with non bankruptcy estate funds. *Wolff*, slip op. at 3.

attorney's duties under the bankruptcy code and federal rules and the impact of those duties on the reasonableness of the attorney's fee, as discussed below.

III.

In compliance with the Supreme Court's decision in *Lamie v. United States Trustee*, 540 U.S. 526 (2004), this Court has long recognized "a [c]hapter 7 debtor's attorney's pre-petition fees should be paid in full with pre-petition funds and post-petition fees may be paid only by the debtor with non estate, usually post-petition, funds." *In re Wolff*, Bankr. No. 03-40853, slip op. at 3 (Bankr. D.S.D. May 17, 2004) (Hoyt, J.). Attorney Ronke deviated from this standard in this case through his bifurcated fee arrangement. As a result, his flat fee for his post-petition services was not reasonable and he ran afoul of 11 U.S.C. § 329(b).

Section 707(b)(4) of the bankruptcy code imposes certain duties on a chapter 7 debtor's attorney:

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has-

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion-

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the

information in the schedules filed with such petition is incorrect.

11 U.S.C. § 707(b)(4)(C) and (D). Under these provisions, the debtor's attorney must

"make a reasonable inquiry as to the circumstances giving rise to the bankruptcy petition and all the facts asserted therein." *In re Beinhauer*, 570 B.R. 128, 136 (Bankr. E.D.N.Y. 2017) (citations omitted). What is a reasonable investigation is reviewed on a case-by-case basis. *Desiderio v. Parikh (In re Parikh)*, 508 B.R. 572, 585 (Bankr. E.D.N.Y. 2014) (citation omitted). But as a minimum, it is clear that an attorney may not just simply rely on information provided by a client without independently verifying publicly available facts. *Beinhauer*, 570 B.R. at 137; *In re Seare*, 493 B.R. 158, 211 (Bankr. D. Nev. 2013). An attorney must investigate any inconsistencies by asking more questions or seeking additional documents. *Id.* "[T]he attorney is the expert and cannot rely upon a client's limited understanding of what constitutes the 'complete' or 'necessary' information that the attorney must have[.]" *Seare*, 493 B.R. at 211.

In re Tatro, Bankr. No. 19-70537, 2020 WL 534715, at *6 (Bankr. C.D. Ill. Jan. 31, 2020). In sum, "[t]he statute requires the attorney, pre-petition, to review and make an inquiry into the debtor's financial affairs to ensure the petition and schedules are accurate." *In re Prophet*, 628 B.R. 788, 796-97 (Bankr. D.S.C. 2021), *cited in Baldwin*, 2021 WL 4592265, at *9. *See also Allred v. Arendt (In re Dozier)*, Bankr. No. 15-30018, Adv. No. 20-3006, 2021 WL 5991749, at *6-7 (Bankr. D.S.D. Dec. 15, 2021).

Similarly, under Fed.R.Bankr.P. 9011(b),

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

...

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed.R.Bankr.P. 9011(b) (in pertinent part). *See also* SOUTH DAKOTA RULE OF PROFESSIONAL CONDUCT 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."). As succinctly stated by one court:

If there are certain services that must be provided prepetition, then any of those services promised postpetition cannot be considered in determining the reasonableness of the postpetition flat fee charge. That in turn leads to the question of whether the services provided prepetition meet the standards of competency required by the [state's] Bar Rules and the requirements of Fed. R. Bankr. P. 9011(b) and 11 U.S.C. § 707(b)(4).

In re Brown, 631 B.R. 77, 95 (Bankr. S.D. Fla. 2021).

With one exception,¹¹ there is nothing in the record to suggest Attorney Ronke

¹¹ The record reflects one clear exception to Attorney Ronke's fulfillment of his duties under § 707(b)(4)(C) and (D). Attorney Ronke and Debtor's Pre-Filing Agreement, to a greater extent, and their Post-Filing Agreement, to a lesser extent, contain admonitions that Debtor is solely responsible for providing all the information necessary for the bankruptcy and that Attorney Ronke will not use public records, other than a credit report, to obtain necessary information or verify the information Debtor provides. These admonitions in the Pre-Filing Agreement include, for example, making Debtor responsible for correct creditor addresses and stating Attorney Ronke will not conduct a real estate title search or search court records for judgments and

did not fulfill his duties under § 707(b)(4)(C) and (D) or that he violated Rule 9011(b) or a rule of professional conduct. *See In re Kolle*, Bankr. No. 17-41701-CAN, 2021 WL 5872265, at *49-50 (Bankr. W.D. Mo. Dec. 10, 2021) ("[T]he court questions how a lawyer could reasonably believe he would be able to provide competent and diligent representation to these debtor clients when structuring the engagement so that all the real work was performed after filing."). However, by not receiving full payment for the pre-petition services necessary to comply with § 707(b)(4)(C) and Rule 9011(b) and by advocating to Debtor and the Court that the cost of those services should be considered part of his post-petition fee, Attorney Ronke violated the strictures of *Lamie* and *Wolff*.

[The debtor's attorney] asks the court to believe that, on the [one] hand, he "thoroughly" spends time with the clients to ensure they are eligible to file chapter 7 and understand the factoring process, but on the other hand, that all the work in the case except for the filing of the shell petition is done postpetition, such that ascribing \$0 of value for the prepetition legal services is reasonable. He cannot have it both ways: either he is complying with his duties to perform a Rule 11 investigation before the client files a chapter 7 bankruptcy or he is not. And if he is performing a Rule 11 investigation pre-bankruptcy and waiving those prepetition fees when the debtor files then, again, why is the debtor charged more for the postpetition fees; shouldn't the amount of time spent prepetition be deducted from the fees quoted for the allegedly all postpetition services?

Kolle, 2021 WL 5872265, at *49.

That is true here: If Attorney Ronke fulfilled his pre-petition duties, the fee for

lawsuits involving Debtor. As discussed in *Tatro*, to fulfill his duties under § 707(b)(4)(C) and (D), Attorney Ronke should always use public records to verify the information a debtor provides. *Tatro*, 2020 WL 534715, at *6.

the services necessary to fulfill those duties must either be paid in full pre-petition per *Lamie* or waived. And if Attorney Ronke is waiving his pre-petition fee, it must be truly waived; he cannot backdoor the pre-petition fee into the post-petition fee through the Post-Filing Agreement. *See Ridings v. Casamatta (In re Allen)*, 628 B.R. 641, 645-46 (B.A.P. 8th Cir. 2021). As with any service provider with whom Debtor did business pre-petition, Debtor may not simply agree with Attorney Ronke to denominate these pre-petition services as post-petition services to be paid post-petition. *Brown*, 631 B.R. at 93 ("There is no question that using the postpetition agreements to pay for prepetition services is not acceptable, since that is merely seeking to do indirectly what is prohibited directly.") (citing *In re Hazlett*, Bankr. No. 16-30360, 2019 WL 1567751, at *9 (Bankr. D. Utah Apr. 10, 2019)). Attorney Ronke has valued his pre-petition services at zero; whatever obligation Debtor may have had to pay the fee for those pre-petition services has been discharged and is not enforceable because no court-approved reaffirmation agreement exists.¹² As a consequence, Attorney Ronke's pre-petition legal services cannot provide support for his post-petition flat fee of \$2,400.00.

Attorney Ronke also impermissibly inflated his post-petition fee because Debtor chose the pay-later option. First, as noted above, Attorney Ronke cannot include in his post-petition fee any compensation for services rendered pre-petition. As aptly

¹² To be enforceable, Debtor and Attorney Ronke would have had to sign the reaffirmation agreement before Debtor received her discharge and the Court would have had to approve the agreement since Debtor could not have been represented by Attorney Ronke when she signed the agreement. 11 U.S.C. § 524(c)(1) and (d).

stated by another court in this circuit:

[A] lawyer has a right to provide pro bono service or to waive fees, of course. [The debtor's attorney] could legitimately and ethically have offered pro bono services to these clients for his prepetition services in meeting with them, counseling them about bankruptcy, reviewing their documents, and preparing and filing their petitions. [The debtor's attorney] says this is what he did. But, if [the debtor's attorney] had truly waived his prepetition fees for these services, then why didn't the total fee for legal services for filing a chapter 7 bankruptcy cost less instead of more than what he charges clients who pay upfront? The practice has the appearance of being a sham, as the court's [order to show cause] posited, solely for the purpose of allowing [the attorney's law firm] to treat prepetition, dischargeable fees as postpetition so the account receivable could be factored, not as a benevolent pro bono service to the clients.

Kolle, 2021 WL 5872265, at *46.

Second, Attorney Ronke also cannot justify his post-petition flat fee by agreeing to perform services for Debtor that were not reasonably anticipated in her case. The reasonableness of a flat fee is assessed differently than a fee based on an hourly rate.

In re Dabney, 417 B.R. 826, 831 (Bankr. N.D. Ga. 2009), cited in *Brown*, 631 B.R. at 94.

Because a flat fee encompasses all required services and the extent of required services is not fully predictable at the outset of a case, the reasonableness of a flat fee cannot necessarily be determined based on the amount of services required in the case. Nevertheless, the amount of a proposed flat fee must bear some relationship to the work that will likely be required, which inevitably depends on the unique facts and circumstances of the case.

Dabney, 417 B.R. at 831, quoted in *Brown*, 631 B.R. at 94. Compensation for services that would not be anticipated to arise in this case cannot be considered in the reasonableness determination. *Brown*, 631 B.R. at 94; *In re Wright*, 591 B.R. 68, 94

(Bankr. N.D. Okla. 2018) (in a case with bifurcated fees, the debtor's attorney's fees should relate to the actual services performed and not be motivated by how much the debtor is able to pay up front).

Debtor had no real property and minimal personal property. Debtor had only one secured creditor, which held a lien on her vehicle. Debtor did not owe any taxes, domestic support obligations, or other priority claims. The trustee filed a turnover motion, and Attorney Ronke reported a possible nondischargeability action by a governmental entity. The sum at stake in both matters was minimal.¹³ No hearing on the trustee's turnover motion was held, and the motion was resolved through an agreed order. No creditor timely commenced a nondischargeability adversary proceeding under 11 U.S.C. § 523(a)(2), (4), or (6). Moreover, any services related to a nondischargeability adversary proceeding would have been excluded from Attorney Ronke's flat fee for post-petition services. Debtor timely received her discharge. Nothing indicates this case was remarkable in any way. Nonetheless, Attorney Ronke charged Debtor \$2,400.00 for post-petition services, which excluded preparing the schedules and statements, or \$600.00 more than if Debtor had paid Attorney Ronke's fee in full pre-petition, which would have included preparing her schedules and statements.

To determine the customary fee in the community for the same legal services

¹³ Under the turnover order, the case trustee will receive the bankruptcy estate's 152/365ths share of Debtor's 2021 federal income tax refund, less the \$1,184.54 Debtor claimed exempt. Debtor scheduled the South Dakota Department of Labor as holding a disputed claim for \$1,656.00 for an overpayment of unemployment benefits.

rendered, *Mahendra*, 131 F.3d at 758, quoted in *Allen*, 628 B.R. at 645, the Court reviewed the 326 chapter 7 cases filed in the southern division of this district in 2021. Of those, there were seven consumer chapter 7 cases in which the debtor was an individual who scheduled similar assets (no real property; personal property with a value under \$15,000.00) and similar liabilities (no priority claims; one or two secured claims totaling less than \$10,000.00; and total liabilities of more than \$50,000.00 but less than \$75,000.00).¹⁴ In each of these seven cases that mirrored Debtor's case, the debtor's attorney agreed to provide the same services to the chapter 7 debtor: analyzing the debtor's financial situation and advising the debtor whether to file bankruptcy, preparing and filing the petition, schedules, and statement of financial affairs, and representing the debtor at the meeting of creditors. The seven cases were filed by four different attorneys, including Attorney Ronke. In the seven, the average attorney fee, including the case filing fee, was \$1,965.32.

Under the bifurcated fee agreements in this case, Attorney Ronke's total fee of \$2,939.06, including the case filing fee, exceeded the customary legal fee of

¹⁴ Excluded from the 326 total for chapter 7 cases filed in the southern division in 2021 were three that converted to chapter 12 or chapter 13. Of the 326 cases, 10 were eliminated from comparison because they were filed by the debtor(s) *pro se*, 52 were eliminated because the debtor(s) had priority claims against them, 56 were eliminated because the debtor(s) had real property, and 104 were eliminated because the debtor(s) did not have any secured debts. In those remaining that were not included in the seven comparables, the debtor(s) had total assets or total liabilities that were dissimilar to Debtor's. Finally, excluded from the seven comparables were Debtor's case, of course, and one other filed by Attorney Ronke. In it, the debtor had assets and liabilities similar to Debtor's but the debtor had also entered into a problematic bifurcated fee agreement with Attorney Ronke. The seven comparable cases were Bankr. Nos. 21-40002, 21-40119, 21-40198, 21-40230, 21-40245, 21-40267, and 21-40340. The arithmetic mean or average attorney fee was \$1,965.32 and the median was \$1,890.75. Of the seven, the lowest attorney fee was \$1,800.00 and the highest was \$2,300.00.

\$1,965.32 by \$973.74. Nothing in the record supports a finding that the particular circumstances of this case justify the extra \$973.74. And that fee disparity increases significantly because Attorney Ronke waived the fee for his pre-petition services of preparing Debtor's schedules and statements, which the fee agreements in the other comparable cases included in their flat fee agreements.

Accordingly, when Attorney Ronke's actual post-petition services and reasonably anticipated post-petition services are considered in light of the lack of complexity of this case and the customary legal fee in similar chapter 7 cases in the southern division of this district, *Mahendra*, 131 F.3d at 758, quoted in *Allen*, 628 B.R. at 645, the record does not show his \$2,400.00 flat fee for post-petition services was reasonable, and much of that fee would likely be subject to disgorgement.¹⁵

Because this is the first time the various and sundry problems with Attorney Ronke's bifurcated fee agreements have been called to his attention—to date, no party in interest has questioned those agreements—the Court will not order him to disgorge any portion of his fee in this or other similar pending cases. However, this is Attorney Ronke's "one bite of the apple." In future cases, he must conform his bifurcated fee agreements to the guidance provided herein and be better prepared to demonstrate the reasonableness of his fee for both pre- and post-petition services.

While Attorney Ronke and his financing company seemingly made every effort

¹⁵ The Court is unable to calculate a precise figure that would be subject to disgorgement without receiving evidence regarding whether all, some, or none of Attorney Ronke's services related to the trustee's turnover motion were included in the flat fee. A reading of the Post-Filing Agreement alone did not yield that answer, though, of course, it should have.

to draft his Disclosure of Compensation, the Pre-Filing Agreement, and the Post-Filing Agreement in such a way as to avoid the several disclosure issues discussed in other decisions regarding bifurcated fee agreements, *see, e.g., Baldwin*, 2021 WL 4592265, at *12 (citing *Brown*, 631 B.R. at 98-101), Attorney Ronke's Disclosure of Compensation was not completely accurate.¹⁶ Paragraphs 4 and 6.a. in his Disclosure of Compensation conflicted because his \$2,400.00 flat fee did not include the first and second of the three services listed in paragraph 4. Attorney Ronke's excluded services in paragraph 5 of his Disclosure of Compensation should not have included "representation and advisement on reaffirmation agreements" because Attorney Ronke did agree to do so for Debtor in the Post-Filing Agreement. Ideally, paragraph 5 should have exactly matched the services listed under the "Excluded Services" in both the Pre-Filing Agreement and the Post-Filing Agreement and his Disclosure of Compensation, the Pre-Filing Agreement, and the Post-Filing Agreement should have all carefully explained the difference between Attorney Ronke's "reviewing and advising" Debtor on a matter versus his *not* "representing" Debtor on the same matter.¹⁷

¹⁶ Whether at question 3 of his Disclosure of Compensation Attorney Ronke should have stated he was sharing 25% of his \$2,400.00 fee with his financing company is an issue left for another day. *See supra* note 2 and *infra* note 18.

¹⁷ An attorney's Disclosure of Compensation is due 14 days after the debtor's petition is filed. If Attorney Ronke persists in filing cases with bifurcated fee agreements, he may want to wait to file his disclosure until after the debtor decides whether to sign the Post-Filing Agreement. Attorney Ronke's disclosure would then reflect both agreements. If Attorney Ronke files his disclosure after the debtor has signed only the Pre-Filing Agreement, he would then need to file a supplemental disclosure after the debtor signs the Post-Filing Agreement. *See Fed.R.Bankr.P. 2016(b)* and *Bankr D.S.D. R. 2016-1* and Appendices 2L and 2N.

In sum, Attorney Ronke's pre-petition services, whether the fee for them is waived or paid in full by the debtor pre-petition, must be sufficient to fulfill his obligations under § 707(b)(4)(C), Fed.R.Bankr.P. 9011(b), and all applicable rules of professional conduct. Attorney Ronke may waive his fee for pre-petition services and expenses, excluding the case filing fee, but he cannot slide that pre-petition fee into his post-petition fee. Any flat fee for Attorney Ronke's post-petition services must reflect the actual work expected to be performed post-petition for a particular debtor and may not be inflated by his agreeing to perform post-petition services not reasonably anticipated in that case. Attorney Ronke's Disclosures of Compensation need to be internally consistent and accurately reflect his one or more fee agreements with a debtor.

Finally, though it is not an issue related to the reasonableness of his compensation under § 329(b), the Court notes its concern regarding the payment of Debtor's filing fee. Debtor filed an application to pay her filing fee in four installments, with the final installment due 120 days after the petition date. The Court granted the application as filed, altering only the date of the second installment to avoid its falling on a weekend. Debtor, however, paid the filing fee in full just 22 days later, before even the first installment was due. These circumstances indicate either Debtor may have had the ability to pay the filing fee in full on the petition date *or* Attorney Ronke or his financing company may have advanced the full filing fee so Debtor could begin making the installment payments on Attorney Ronke's post-petition attorney fee without violating Fed.R.Bankr.P. 1006(b)(3). If the former, Debtor's application did

not meet the sole requirement of Fed.R.Bankr.P. 1006(b)(1): that Debtor be unable to pay the filing fee except in installments. If the latter, Attorney Ronke may have violated 11 U.S.C. § 526(a)(4) by advising Debtor to incur debt to pay for bankruptcy-related legal services¹⁸ and also violated Rule 1.8(e)(1) of the SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT by advancing a court cost that was not contingent on the outcome of Debtor's bankruptcy case. *See Brown*, 631 B.R. at 103; *Baldwin*, 2021 WL 4592265, at *7-8; *In re Carr*, 613 B.R. 427, 436-37 (Bankr. E.D. Ky. 2020). If the full facts, which are not of record, demonstrate either circumstance actually occurred, Attorney Ronke must ensure the same misstep regarding the filing fee does not happen in a future case.

An appropriate order will be entered.

Dated: February 9, 2022.

BY THE COURT:



Charles L. Nail, Jr.
Bankruptcy Judge

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

¹⁸ Whether the financing of Attorney Ronke's chapter 7 post-petition fee also violates 11 U.S.C. § 526(a)(4) or constitutes an impermissible fee sharing arrangement are issues left for another day. *See supra* notes 2 and 16.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:) Bankr. No. 21-40170
) Chapter 7
BOBBI JO QUIGLEY)
SSN/ITIN xxx-xx-4487) ORDER RE: REVIEW OF
) DEBTOR'S ATTORNEY'S FEE
Debtor.) UNDER 11 U.S.C. § 329(b)

In recognition of and compliance with the decision entered this day; and for cause shown; now, therefore,

IT IS HEREBY ORDERED in all chapter 7 cases filed by Attorney Eric John Ronke on or after the date of this order, Attorney Ronke shall ensure:

- (a) his pre-petition services are sufficient to fulfill his obligations under 11 U.S.C. § 707(b)(4)(C), Fed.R.Bankr.P. 9011(b), and the SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT;
- (b) the compensation for his pre-petition services and the reimbursement for the expenses he incurs pre-petition, excluding the filing fee, are either paid in full pre-petition or waived in their entirety;
- (c) he is not violating Rule 1.8(e)(1) of the SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT by advancing a court cost that is not contingent on the outcome of the debtor's bankruptcy case, which includes, but is not limited to, the case filing fee;
- (d) the compensation for his post-petition services is not inflated to cover unpaid compensation for services he rendered pre-petition;
- (e) any agreed flat fee for post-petition services in each case is not inflated by his agreeing to perform post-petition services not reasonably anticipated in that particular case; and
- (f) his Disclosures of Compensation are internally consistent and accurately reflect the one or more fee agreements he has with each particular debtor.

So ordered: February 9, 2022.

BY THE COURT:

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

Charles L. Nail, Jr.
Bankruptcy Judge

