SO ORDERED.

SIGNED this 21 day of February, 2007.

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE: **LORRIE LEE BECK,** **Debtor.**	**Case No. 06-40774** **Chapter 13**
CHRISTOPHER SCOTT TORREZ **MELINDA ELIZABETH TORREZ,** **Debtors.**	**Case No. 06-40791** **Chapter 13**
KRISTEN KAY RHINEHART, **Debtor.**	**Case No. 06-40792** **Chapter 13**
DAVID MADISON SHANNON **PHYLLIS JEAN SHANNON,** **Debtors.**	**Case No. 06-40824** **Chapter 13**
GREGORY GEORGE MCGOVERN, JR., **Debtor.**	**Case No. 06-40825** **Chapter 13**

JESSICA LYNN SMITH,	**Case No. 06-40829**
	Chapter 13
Debtor.	
JENA LYN JOHNSON,	**Case No. 06-40830**
	Chapter 13
Debtor.	
JANICE KAY HARPER,	**Case No. 06-40831**
	Chapter 13
Debtor.	
ANGEL RACHELLE JONES,	**Case No. 06-40840**
	Chapter 13
Debtor.	
BEULAH MAE MCMASTER,	**Case No. 06-40841**
	Chapter 13
Debtor.	

MEMORANDUM AND ORDER ON OBJECTIONS BY CHAPTER 13 TRUSTEE TO ATTORNEY FEES

Before the Court are the Objections to Confirmation filed by the Chapter 13 Trustee in each of these ten cases. The objections are essentially identical; the Trustee generically claims that the fees requested exceed the fees this Court has previously approved for similar work. In each case, the Court has confirmed the plan subject only to the final resolution of the attorney fee issue. The Court heard two days of evidence, admitted 145 exhibits,[1] has

[1]The exhibits included copies of orders from around the country setting fees, copies of pertinent pleadings and schedules for the ten test cases, time records regularly maintained by some attorneys, and re-created by others in these ten cases and in other Chapter 13 cases, data about the percentage of attorney fees actually collected from the estate by attorneys who most frequently file Chapter 13 petitions, data about the present value of those fees when received over 30-60 month plans, data showing a reduction of over 25% of the number of attorneys between 2005 and 2006 filing Chapter 13 cases in this division, summaries of additional work required both pre- and post-filing as a result of BAPCPA's provisions, and the like.

carefully considered closing arguments, and is now prepared to rule. These matters constitute core proceedings,[2] and the Court has jurisdiction to decide them.[3]

Historical "Presumptive" Fees

Prior to the enactment of the Bankruptcy Reform and Consumer Protection Act of 2005,[4] an unofficial "presumptive" attorney fee for the filing of Chapter 13 cases in this division had been set by custom between $1,500 to $2,000, depending on the (1) time and labor required, (2) novelty and difficulty of the issues, (3) skill required, (4) preclusion of other employment, (5) customary fee, (6) whether the fee was fixed or contingent, (7) time limitations, (8) amount involved and results obtained, (9) experience, reputation, and ability of counsel, (10) undesirability of the case, (11) nature and length of professional relationship with the client, and (12) awards in similar cases.[5] As a general rule, the Court of Appeals for the Tenth Circuit has held that these factors, called the "*Johnson"* factors after the name of the original decision naming those factors, should be considered in determining whether an attorney's fee is reasonable.[6] This was the prevailing fee structure this judge inherited over

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[2]28 U.S.C. § 157(b)(2)(A) and (L).

[3]28 U.S.C. § 1334.

[4]All statutory references in this opinion are to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C. §§ 101 - 1532 (2005), unless other specifically noted. BAPCPA was signed into law on April 20, 2005, but the effective date for most of its provisions was delayed until October 17, 2005.

[5]*In re Vista Foods USA, Inc*., 234 B.R. 121, 127 (Bankr. W.D. Okla. 1999). These factors are very similar to the eight numbered paragraphs contained in KRPC Rule 1.5(a) of the Kansas Rules of Professional Conduct, which deals with attorney fees.

[6]*Id*. at 127, citing *Rosenbaum v. MacAllister,* 64 F.3d 1439, 1445 (10th Cir.1995) and *Gottlieb v. Barry,* 43 F.3d 474, 483 (10th Cir.1994).

four years ago, and the Court was never requested, nor saw a need, to review or question that structure until very recently.

That $1,500-$2,000 fee, which was presumed to be reasonable absent an objection and presentation of evidence to the contrary, typically covered all legal services incurred in representing the debtor through dismissal or discharge, as long as the debtor timely made his plan payments (and other normal course payments outside the plan) and did not need an attorney, post-confirmation, to file motions on his behalf, to respond to motions (or adversary proceedings), or to appear at hearings. Testimony at the hearing substantiated that most attorneys honorably "hold their clients' hands " during the entire pendency of the Chapter 13. That work includes receiving and returning telephone calls from these clients, receiving and reviewing electronic notices of any activity in the file, such as filing of claims or Trustee interim reports, reminding their clients of their duty to file ongoing tax returns, and making sure the discharge is obtained, if appropriate, without charging the debtors for those additional services if court work is not also required. In other words, most attorneys simply considered those types of post-confirmation services as part of the work their offices had committed to provide as part of the original fee, and did not seek additional compensation.

If additional court services are required, however, and such work is required in the vast majority of Chapter 13 cases at some point during their pendency,[7] some attorneys

[7]The Court did a study and learned that of the 1064 Chapter 13 cases filed in Topeka and assigned to this Judge in 2003, for example, 987 ultimately had a plan confirmed. Of those, 843 (85%) had at least one post-confirmation motion filed that would have required additional attorney time. Because this data is not evidence presented at the trial, the Court does not rely on it for any part of this opinion, but the numbers are consistent with this judge's experience handling these cases, and are reflective of the length of the period over which Chapter 13 debtors' attorneys retain responsibility towards their clients.

simply tack a prayer onto the end of the motion or response, seeking an award of the additional fees warranted by the services rendered.[8] Other attorneys submit a formal application for additional fees under § 330(a)(4)(B), itemizing by tenths of an hour the work done, and multiplying those hours times at that attorney's (or paralegal's) hourly rate. Some attorneys do both; they sometimes tack requested fees onto discrete pleadings filed, but in other instances more formally seek compensation by filing a customary fee application for services not directly related to a court proceeding.

After enactment of BAPCPA, however, debtors' attorneys believed that the presumptive fee should be increased in light of significantly increased burdens placed on them as a result of that legislation. When fees requested reached $3,450 in what appeared to be routine cases where the debtor's income was below the median for the state, one of the Court's "gatekeepers," the Chapter 13 Trustee, properly objected to confirmation in each of these cases. The Trustee's objections, as well as the evidence he introduced at trial, appeared to be geared more towards receiving guidance in reviewing future plans for the reasonableness of attorney fees than a particular concern about any of the individual cases.

These Proceedings

The Court announced to the bankruptcy bar in several settings that it would hear evidence on the attorney fee issues raised by these ten cases. Because the Court believed its

[8]The most frequent matters this Court sees on its miscellaneous Chapter 13 dockets are the following: Motions to Abate payments because of some temporary hardship, Motions to Incur Debt, Motions to Modify the Confirmed Plan, Motions to Retain Tax Refund, Trustee's Motions to Dismiss for default (or lack of feasibility due to a § 1305 or other claim), Motions for Turnover of post-petition tax returns, Motions to Compel, and Motions for Relief from Stay.

decision might well impact other lawyers whose fees were not at this time the subject of these particular objections, the Court decided to make the hearing a fairly open process. To that end, for example, the Court allowed a creditor's lawyer to ask questions of each witness, even though that creditor only has a claim in one of the cases. The Court did so not only to demonstrate that it wished to hear as many perspectives on the issue as possible, but also because having true opposition to the requested fees from an interest group who is demonstrably impacted by the attorney fees allowed[9] would greatly assist the Court's understanding and analysis of the issues, through careful cross-examination of witnesses. The vast majority of the witnesses have a pecuniary interest in having the Court significantly raise the customary "presumptive fee," so it was important to employ the adversarial process.

Six lawyers testified, all of whom have in excess of ten years experience, and all of whom regularly file Chapter 13 cases in this division: Michael Brunton and Gary Hinck, who happen to be the "lucky" attorneys in the ten test cases, and who are the highest volume Chapter 13 filers in this division, plus Joseph Wittman, Jill Michaux, Wesley Smith, and John Hooge. In addition, Darcy Williamson, a Chapter 7 panel trustee, who filed some Chapter 13 cases pre-BAPCPA, and is preparing to file some post-BAPCPA, testified about what she thought a fair fee should be, even though she admittedly has not yet filed any

[9]Exhibit 60 showed that for cases filed between 2002 and 2006, the Trustee paid out $5.4 million in debtors' attorney fees. The creditor's lawyer argued that creditors are greatly impacted by the allowed attorney fees because for every dollar paid for attorney fees, a dollar is not then paid to a creditor (or the requirement to pay secured creditors and attorneys fees pro rata extends the period over which the secured creditor's claim is paid, subjecting ultimate receipt to the vagaries of a Chapter 13 debtor's often precarious financial solvency during his plan). The creditor's lawyer also argued that because of the concept of pro rata distributions to unsecured creditors, in routine cases no one creditor has sufficient monetary incentive to contest attorney fees because that objecting creditor, even if it prevails, will only receive its pro rata share of any "savings" won in that attorney fee dispute.

Chapter 13 cases in the sixteen months since most provisions of the new law became effective.

Analysis

It is absolutely imperative that competent counsel be motivated to seek, accept and ably handle Chapter 13 cases. That motivation starts with being fairly compensated for the work they perform. The complexity and importance of the work, alone, justify such compensation, but there are other reasons able counsel are vital to the system. The most important reason is that this Court rather routinely sees pro se debtors "give away" rights or property that they would otherwise be legally entitled to retain because of their ignorance of the law.[10] A second, albeit less significant, reason is that pro se debtors also increase the Court's and Clerk's costs of efficiently handling bankruptcies.

The Court also heard evidence that the number of attorneys filing bankruptcy cases decreased significantly between 2005 and 2006 in this division. Seventy-four attorneys filed at least one case in 2005, but that number dropped to 55 in 2006—the first full year post-BAPCPA. This is clearly no coincidence;[11] evidence at trial demonstrated that some lawyers who previously filed only a few cases each year had elected to refer those cases to others

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[10]Just one of many such examples occurs when the pro se debtor thinks he has no property interest in funds in his checking account when he has written and delivered checks pre-petition, but the checks have not cleared the account on the date of filing. *See, e.g, In re Schoonover*, 05-43662, October 30, 2006 (holding that money in bank account on date of filing is property of the estate, even when debtor has written checks on that account that have not yet cleared,).

[11]Attorneys practicing in this Court after April 20, 2005, were faced with reviewing and learning at least the following: a) the new statute, itself; b) new District of Kansas local bankruptcy rules caused by the statutory changes; c) new national bankruptcy rules; d) new national official forms; and e) new local official forms, in a few instances. They were also faced with acquiring new software programs, and attending continuing legal education seminars, in an attempt to grasp all the nuances of the statute.

instead of learning all the changes brought by the new legislation. This evidence implicates at least two of the *Johnson* factors: (3) skill required and (10) undesirability of the case. Twenty-six percent of the lawyers who, pre-BAPCPA, previously had the skills and the desire to file Chapter 13 cases apparently have suddenly decided they either do not have the skills, or no longer desire to file these cases. Again, having enough able counsel available to provide debtors the relief that Congress, and the Kansas legislature through statutory exemptions, have afforded Kansas debtors, is critical to the proper operation of the system.

Section 330(a)(4)(B) of the Bankruptcy Code authorizes the Court to allow reasonable compensation to an attorney who represents an individual debtor in a Chapter 13 case. The attorney seeking fees has the burden of proof on the compensability of his services.[12] As Chief Judge Nugent recently noted *In re Mayer*,[13] the relevant statute requires that the Court's allowance of fees be

> "based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." These last words of § 330(a)(4)(B) fairly implicate the application of the § 330(a)(3) factors [including] . . .(A) the time spent; (B) the rate charged; (C) the necessity and benefit of services at the time they were rendered; (D) whether the services were performed within a reasonable amount of time given their complexity and importance; (E) whether the attorney has demonstrated skill and experience in bankruptcy; and (F) whether the compensation is reasonable given customary compensation charged by comparably skilled practitioners in nonbankruptcy cases.

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[12] *Cf. Case v. Unified School Dist. No. 233, Johnson County, Kan.*, 157 F.3d 1243, 1250 (10th Cir. 1998).

[13] 2006 WL 2850451 (Bankr. D. Kan. Oct. 2, 2006) (finding that $2,500 is deemed presumptively reasonable in Chapter 13 cases, noting that if attorney believes additional fees are warranted, a customary fee application, with detailed time records back to the outset of representation, will be required for the consideration of the Trustee and Court).

This Court wholeheartedly agrees with Judge Nugent's conclusion, however, that it would be extremely inefficient for this Court, and the parties, to use such a detailed lodestar approach to determine the reasonable fee in each and every one of the hundreds of Chapter 13 cases filed in this division every year, especially for those that are rather uncomplicated, non-business cases.

The parties would have to submit detailed fee applications for routine services done in each case, the preparation of which the client would obviously have to pay, and the Trustee, creditors and the Court would be required to individually review those. Without a doubt, this would increase the relative costs to the parties, with little (or no) demonstrated benefit to anyone in the vast majority of those cases.

Although that additional work and cost will be necessary in some cases, the purpose of this hearing (in addition to looking at the fees actually requested in these ten cases), was to see if the tasks necessary to file routine or average Chapter 13 cases, and to get plans therein confirmed, were enough similar that the Court could presume that fees under a stated amount were more likely than not reasonable. The evidence the Court received, combined with this Court's own experience in reviewing hundreds of Chapter 13 schedules, and reading thousands of motions and orders emanating from those Chapter 13 cases, well satisfies this Court that a "presumptively reasonable fee" should be adopted.

The consistent testimony of all counsel who routinely file Chapter 13 cases was that their preparation for the fee hearing required them to much more carefully review the time they were actually spending in processing post-BAPCPA Chapter 13 cases. All these routine

filers expressed surprise at how much they had under-estimated the time they were now spending on relatively routine cases. In addition, those same lawyers had not realized the relatively low percentage of their allowed fees they were actually receiving from the Chapter 13 Trustee, which data the Trustee presented.[14] The relatively low percentage is, undoubtedly, caused by the statistically high number of cases that are dismissed prior to full distribution.

The Court also heard evidence detailing, because of the period of time over which debtors' counsel frequently receive payment, the time value of money and the "real" amount counsel receives, assuming a plan is even finished—and a great many are not. Needless to say, an award of $1,000 today is not worth $1,000 received over a five year period.

Based on the evidence received, each witness indicated they would most likely seek increased fees in future cases, subject to this Court's order, and for those attorneys who do not routinely keep time records, an admission that doing so might well be in their best interest both to help them better understand their actual costs in processing these cases, as well as to justify approval of the actual fees earned. At the conclusion of the evidence, the parties in interest made the following requests.

The Trustee requested the Court set the presumptively reasonable fee at $2,500 for debtors whose income falls below the median income level for Kansas, and $3,000 for

[14]Exhibit 60A, which represented the percentage of fees actually collected and paid out by the Trustee in Chapter 13 cases filed between the years 2002-2006 (that were now closed, meaning there would be no further distributions by the Trustee, unless the cases were quickly re-opened), showed the following collection rates: Michaux 78.91%, Brunton 51.68%, Hooge 60.30%, Smith 87.10%, Wittman 69.71%, Neis, 52.33% and Hinck 42.61%. This data does not mean that these attorneys were unable to collect the difference either directly from their clients, post-dismissal, or against collateral (such as tax refund assignments) they had secured with attorney fee agreements.

above-median debtors, as a result of the additional work to file cases for above median income debtors. He further suggested that for services rendered post-confirmation, that could not or should not have been performed within the confirmation time frame, counsel could seek additional fees on a time and hour basis, so long as counsel could demonstrate, upon request, that the fees already charged were insufficient to cover those post-confirmation services.

Counsel Brunton and Hinck requested the Court adopt a flat $3,600 "no look back" presumptive fee, and argued that the Court should essentially ignore the lodestar method and instead look at just the value to the client of having that bankruptcy filed. They argued that because of their specialization in this area, coupled with the efficiencies their computer software and business operations provide because of the volume of cases they file, that even if they spent fewer hours, they should not receive a lesser fee because the client received the result for which he was ultimately paying.

They further argued that their clients sign a contract for an agreed amount, apparently inferring that the Court thus need not be concerned whether there is a positive correlation in every case that the fee sought at least roughly relates to the hours spent and a reasonable hourly rate. They also argued that if additional post-confirmation work is required, that they not be required to justify any additional fees sought by first demonstrating that the initial presumptive fee had been "consumed" by the work required to get the plan confirmed.

The remaining party in interest, the represented creditor, requested the adoption of Judge Nugent's *In re Mayers* $2,500 presumptive fee, as well as his holding that if a debtor's

attorney can later justify additional fees, with time records retained from the inception of the case, additional fees can be awarded. Its position is that if the presumptively reasonable number is set too high (and counsel never has to justify fees below the presumption number), objecting parties will have an impossible burden of persuasion if an objection to fees is ever filed by a creditor or the Trustee, or raised sua sponte by the Court.

Counsel also argued that any fee awarded must be reasonable necessary, and of a demonstrated benefit to the debtor. She argued that if fees are unreasonably high, those fees themselves jeopardize the ultimate success of a confirmed Chapter 13 plan (which in turn harms creditors who have been stayed based on the Chapter 13 plan's commitment to pay all or part of their claims). Counsel noted that in those relatively frequent cases where there is no margin between the disposable income and the plan payment, little money is available over time for required car repairs, house repairs, and the like (because of larger attorney fees), which costs ultimately will have to be paid from some source during the pendency of the case. No evidence was presented demonstrating this fact, but the truth of that argument can hardly be gainsaid based on this Court's experience that debtors, who need to adjust their budgets to make sure their plans appear feasible, often omit necessary expenses related to preservation of assets over a 3-5 year period so they can fund their Chapter 13 plan payment.

Finally, much trial time was consumed by the unstated question whether attorneys should receive the same fee for filing a case which, at least on the surface, appears to be a simple "fee only" Chapter 13 case, as they do for other cases. "Fee only" cases are defined as cases where a debtor's schedules and plan reveal no "visible" reason to file a Chapter 13

case instead of a Chapter 7 case, which can typically be filed for a considerably lower attorney fee. In "fee only" cases, the schedules typically reveal no house or car in jeopardy, or other issue where a Chapter 13 would prove strategically more advantageous for the particular debtor.[15]

The speculation is that the only reason the debtor elected to file under Chapter 13 is because he has no ability to pay the admittedly lesser Chapter 7 attorney fee up front; debtor's counsel then takes his higher Chapter 13 fee over the life of the Chapter 13 case.[16] Creditor's counsel argued that in "fee only" cases, the attorney fees sought are thus not for debtor's benefit (at least the difference between a Chapter 13 and Chapter 7 fee, plus the Chapter 13 Trustee's commissions), but instead only for counsel's benefit, and thus cannot be approved under § 330(a)(4)(B).

In response, Debtors' counsel noted that all debtors' problems are not necessarily readily apparent by a quick review of the schedules, and, further, that some debtors are prohibited from filing another Chapter 7 after a recent discharge in another case. The Court finds the creditor's position [that what appear to be "fee only" cases should not receive the same presumptive fee] was not substantiated at trial, since in no case did the creditor argue (let alone present evidence) that any particular debtor did not "need" to file bankruptcy under Chapter 13. In addition, creditors only objected to confirmation in two of the ten cases, and

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[15]At least the following of the ten test cases appear to fall into this "fee only" category: *McGovern, Smith, Johnson, Harper* and *Jones*.

[16]This is, of course, a direct result of the ramifications of *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004).

in both of those instances, the objections were quickly resolved, without court intervention and without delaying confirmation.

The creditor participating at the fee hearing, Commerce Bank, did not object to confirmation of any of the plans, based on the concern they were "fee only" cases, or otherwise. Accordingly, insufficient evidence was presented at trial to support the veiled accusation that any of the ten cases currently before the Court are truly "fee only" cases.

Furthermore, no evidence was presented at trial that there are sufficient attorneys available to file Chapter 7 cases pro bono, or for a reduced rate, for debtors whose financial problems could theoretically be as easily "handled" with a Chapter 7 filing. So even if a debtor opts to file a Chapter 13—to provide a method to pay attorney fees—because he is unable to fund the up-front attorney fee required in many Chapter 7 cases, it cannot be presumed that the bankruptcy is somehow not for the debtor's benefit.

That said, "fee only" cases have fewer visible problems, and the Court expects that debtor's counsel will charge accordingly. Just as many cases will ultimately require more attorney time than the presumptive fee will cover, the Court knows that many other simple cases will not justify the presumptive fee. The Court fully expects counsel to consider the anticipated difficulty in properly handling each case, based on that attorney's experience dealing with insolvent debtor clients, and counsel shall set the fee commensurate with the nature and complexity of the case.

Presumptively Reasonable Chapter 13 Attorney Fee Post-BAPCPA

Based on the evidence received, the Court finds that the amounts stated below are deemed presumptively reasonable for the normal and customary legal services rendered by an attorney representing the interests of the debtor in connection with a relatively routine Chapter 13 bankruptcy case. The fee for filing such an average Chapter 13 case in this division will be set at $2,800 unless the debtor is an "above-median debtor," defined as debtors whose current monthly income as determined by §§ 707(b)(2) and 1325(b)(3) is above the median income level, and unless counsel is required to file, for a repeat filer, a Motion to Extend the Automatic Stay, or to have the stay put into effect, under §§ 362(c)(3) or (4).

In an above-median case, the Court will allow an additional $500, or a presumptive fee of $3,300, based on the consistent evidence received at trial that it takes on average at least two additional hours of attorney time to collect and complete the form for above-median debtors, and to then deal with the work that oftentimes follow above-median debtors.[17] If counsel must file a motion to extend or create a stay, the Court will also allow an additional $400 to be added and counted as part of the "presumptive fee," which is the amount the

[17]The Court heard testimony that attorneys occasionally need to skillfully work (by waiting to file a case for a set period of time to allow for a high income month to pass within the required 6 month look-back period, or obtaining and providing documentation of actual expenses that exceed the standard expenses) to qualify their clients as a below-median debtor—an obviously advantageous result for their client. Setting the presumptive fee higher for above median debtors could be seen as discouraging lawyers from continuing to strive to qualify their clients as below the median, but of course that is not the intent of this ruling. First, this Court is confident that no attorney practicing in this division would knowingly put his or her own pecuniary interest ahead of the client's interest (by filing the debtor as above-median when taking reasonable, legal steps would qualify the debtor as below-median). Secondly, the attorney always retains the right to keep time records, or other records that will make it easier to re-create reliable time records when needed, to demonstrate the entitlement to the presumptive fee or a higher fee. For that reason, the Court has no doubt that the debtor's bar already has, and will retain, the motivation to professionally represent their clients.

Court believes will fairly cover at least the minimum work typically required in fully processing such a motion.

This fee is meant to cover all services provided by the attorney and/or his firm reasonably required by the debtor to obtain a Chapter 13 discharge (or completion of the case in those cases where the debtor cannot receive a discharge), from initial consultation through the dismissal or closing of the case. The Court has included approximately $450 in these presumptive amounts for post-confirmation time not directly related to responding to motions, filing motions, or appearing in court. These cases, if consummated, may well last at least 36 months, and maybe up to 60 months, and the Court finds that debtors' counsel should not have to separately seek fees for these routine, predictable post-confirmation services.[18]

Most of this work can be accomplished by trained clerical staff or paralegals, the former of whose time should not be separately billed to the client, and the latter of whose time is billed at a considerably lesser rate. Handling routine telephone calls on issues that

[18]Judge Nugent, in *In re Mayers*, noted that the Wichita Chapter 13 trustee had testified that "as much as 90 percent of the time and effort involved in representing a chapter 13 debtor is invested at the front-end." All witnesses who testified in Topeka disagreed with that number; the number most reliably estimated was that there could be as much as 1/3 to ½ of the work needed to complete a case post-confirmation. Hinck Exhibit 2 is a random selection of 5 post-BAPCPA cases filed in 2005. Those reflect that through January 2007, the average post-confirmation time was about 37% of the total time spent on the case, corroborating his testimony. In fact, because many of those cases could remain open for another 4-5 years, the ratio for post-confirmation work is probably higher than 37%. This exhibit also shows that for random cases selected for 2003 and 2004, the average post-confirmation time was almost 50% in 2003 and 45% in 2004. Because the exhibit does not reflect what part of this work is routinely treated as part of the presumptive fee, versus the amount for which Mr. Hinck has sought or will later seek additional compensation, the Court is unsure how relevant this statistic is so long as counsel is able to seek additional fees for post-confirmation work. The Court is aware that Mr. Hinck often, if not routinely, seeks additional fees and costs on a per-motion basis. That said, the testimony was that most attorneys do not seek additional compensation for non-court related attorney or paralegal time spent on the case, and the Court, again, has included $450 for such post-confirmation non-court work.

can be repetitive to a volume Chapter 13 filer's office, sending form letters reminding debtors to provide copies of post-filing tax returns, following up to make sure debtors have completed their post-filing personal financial management course required by § 109(h), and filing the appropriate certificate of completion with the Court, for example, should take almost no attorney time, which is why the fee is estimated at $450.

If this estimate proves too conservative, and counsel is required to intervene in some or all of these matters, or is required to file additional pleadings or appear in court on behalf of the debtor, additional fees may always be sought. At that point, counsel will be required to demonstrate the reasonableness of the entire amount of fees to the trustee, creditors, and the Court, with time records maintained or re-created from the outset of the representation, so that the reasonableness and necessity of the additional services rendered can be properly analyzed.

The Court declines to set the "presumptively reasonable" fee at a flat $3,600, the number requested by counsel Hinck and Brunton. They argued that the Court should set a high average, and if some clients overpaid (on a time and hour basis) and some underpaid, it was essentially "no harm no foul" because each debtor would nevertheless receive the benefit — or "value---- of the contract they willingly signed. This Court does not think this is a fair result, at least to the debtors with the less attorney-intensive cases, as they would in essence be subsidizing those debtors with difficult bankruptcy problems (or debtors who are less compliant) that require more attorney time.

Attached to this opinion as Exhibit A is a chart that summarizes some of the evidence presented on the ten actual test cases. Each of these test cases has had a plan easily confirmed. Therefore, most of the work that would be included within the "presumptive fee" has been completed — again except for the occasional monitoring of the file or receipt of pleadings for which most attorneys testified they do not routinely expect additional compensation, or file a later application for payment.[19] With this background of the facts, and the law, the Court now turns its attention to the actual attorney fees sought, and objections thereto, which are at issue here.

Beck **fees**

The *Beck* case required approximately $2,637 in fees through confirmation.[20] If it turns out Ms. Beck is a totally compliant and financially stable debtor who never requires additional attorney or court time, a presumptive fee of $3,600 seems high. Conversely, what does seem fair is that if Ms. Beck's legal needs throughout the life of this case require additional attorney time, she should be required to pay for it, and if her counsel files a proper application or motion that details those additional fees, they will more than likely be granted.

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[19]A couple of attorneys who do routinely submit fee applications when the amount due exceeds a certain threshold to make it worthwhile, such as Wes Smith and John Hooge, testified they do count all tasks performed when making formal fee applications, which is certainly their right.

[20]The creditor's attorney properly questioned Mr. Hinck during cross examination about whether it was reasonable for him to, all on one day, expend seventy-two minutes of attorney time (at .10 per document) to "receive and review" 12 different Bankruptcy Noticing Center (BNC) notices covering six pleadings, all of which are routine in every Chapter 13 case. *See* pages 12 and 13 of Hinck Exhibit 1. The Court does not believe reviewing those BNC notices could have reasonably required that amount of attorney time. If those notices had been received and reviewed on 12 separate days, that would be different. Accordingly, Mr. Hinck did not meet his burden to show that it would reasonably require that much time when they were viewed, apparently consecutively at one sitting, on Sunday, August 20, 2007.

Mr. Hinck sought a fee of $3,450 in this case. His time records demonstrate that he had incurred fees and expenses of $3,037 through January 21, 2007. Although that amount exceeds the "presumptively fair" rate set herein, the Court will allow fees and expenses in the amount of $3,382 ($3,037 minus $105, representing 6/10 of hour at $175 hour for excessive fees in reviewing 12 BNC notices reviewed on August 20, 2006, plus the $450 for non-court post-confirmation work that the Court is presuming to be fair), because counsel has demonstrated actual time and expenses exceeding the presumptively fair amount. Therefore, the Trustee's objection to the fees sought in *Beck* is sustained for all amounts over $3,382 in fees and expenses, which includes both the time and expenses through January 21, 2007, as well as the $450 cushion that the Court has built in for an expected minimum amount of post-confirmation work.

***Torrez* fees**

Mr. Hinck presented evidence, in the form of contemporaneous time records, demonstrating that he has incurred $2,890 in fees through January 21, 2007 in the *Torrez* case. In his plan, he sought $3,450. No one has objected to the reasonableness of any of the time expended. Again, although the actual fees incurred have already exceeded the $2,800 presumptively reasonable fee, Mr. Hinck has rebutted the presumption and will be allowed $3,340 in fees through January 21, 2007 ($2,890 + $450 in post-confirmation, non court-related time for which the Court assumes counsel will not later separately bill). Accordingly, the Trustee's objection is sustained for the amount sought in excess of $3,340.

Shannon fees

Mr. Hinck presented evidence, in the form of contemporaneous time records, demonstrating that he has incurred $2,530 in fees through January 21, 2007 in the *Shannon* case. In his plan, he sought $3,450. No one has objected to the reasonableness of any of the time expended. Mr. Hinck has rebutted the presumption and will be allowed $2,530 in fees through January 21, 2007, plus an additional $450 for the post-confirmation, non-court related work that is presumptively deemed reasonable, for a total of $2,980. Accordingly, the Trustee's objection is sustained for the amount sought in excess of $2,980.

McGovern fees

The attached chart shows that the actual fees incurred in *McGovern* through January 21 (almost three months after the Court orally confirmed the plan), totaled $1,825; over three hours of these fees was for work accomplished after confirmation. So the real fee for "up through confirmation" was likely around $1,400. There was no evidence submitted that an additional $2,200 in work (to total the requested $3,600) would thereafter be routinely expected in that case for which counsel would not seek additional compensation. In his plan, he sought $3,250 ($200 less than in the other cases). No one has objected to the reasonableness of any of the time expended. Accordingly, the Trustee's objection is sustained for the amount sought in excess of $2,275 ($1,825 + 450) through January 21, 2007.

McMaster fees

Mr. Hinck presented evidence, in the form of contemporaneous time records, demonstrating that he has incurred $2,222 in fees through January 21, 2007 in the *McMaster* case. In his plan, he sought $3,450. No one has objected to the reasonableness of any of the time expended. Accordingly, the Trustee's objection is sustained for the amount sought in excess of $2,672 ($2,222 + 450) through January 21, 2007.

Rhinehart fees

In the *Rhinehart* case, Mr. Brunton estimated he and his staff had incurred 18 pre-confirmation hours, which total around $2,700 in fees at a blended rate to account for the approximate mix of attorney and legal assistant time.[21] Mr. Brunton originally sought a fee of $3,000 in this case, the highest of any of his cases here, probably because he knew he would be required to file a Motion to Extend the Stay, an affidavit to overcome the presumption that the case had been filed in bad faith because Rhinehart was a repeat filer, a hearing on that motion, and the filing of an order. Time records he re-created for this case show that he had incurred fees and expenses through January 21, 2007 of $2,925.[22]

Creditor's counsel demonstrated that Mr. Brunton's time records are not as reliable, however, because they have been "re-created," albeit through use of a precise computer

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[21] *See* the Court's attached chart, which explains how the Court roughly determined the blended rate.

[22] This number was arrived at by multiplying Mr. Brunton's estimate of 19.5 hours times a blended rate of $150, representing attorney and paralegal time. The Court also notes that Mr. Brunton filed a Motion to Cure Post-Petition default (Doc. 28) on October 30, 2006, and in that motion, sought $250 on top of the $3,000 fee contained in the plan. On January 25, 2007, the Court approved that Motion, and granted the additional $250 fee. Accordingly, this presumptive fee appears ultimately reasonable in the *Rhinehart* case since Mr. Brunton has demonstrated an intent to continue to seek additional fees for post-confirmation court work.

system that is set up to log in all or most file activity. To corroborate the creditor's skepticism of Mr. Brunton's re-created time records, Mr. Brunton was asked to estimate the time he had spent pre-confirmation on the 207 Chapter 13 cases he filed in 2006. He estimated he had spent about 19 hours on those cases, the vast majority of which involved below-income debtors. The creditor's counsel then did the math, which reflected that Mr. Brunton would have had to work 3933 hours, or almost 11 hours a day, on each of the 365 days of the year, for that estimate to be correct.

Mr. Brunton admitted he typically worked 60 or fewer hours a week in 2006, and this Court can take judicial notice that not all of Mr. Brunton's time in 2006 was spent on 2006 year filings (as he appeared on various miscellaneous dockets for cases filed as early as 2002). The reliability of Mr. Brunton's time records and estimates are thus not given as much weight for the purpose of this opinion, and this line of questioning demonstrated why contemporaneous time keeping is favored.

In addition, Mr. Brunton's re-created records do not differentiate between time he spent on the case as opposed to time spent by legal assistants, or clerical staff, the latter of which should not be separately billed to the debtor, as it should be a part of the attorney's hourly rate or overall billing to the client.[23] This deficiency makes it exceedingly difficult

[23]Use of paralegals can be especially valuable when they can render certain legal services, such as the research of legal issues or drafting legal pleadings, at less cost than if those same services were performed by an attorney. The Tenth Circuit Court of Appeals has acknowledged the "widespread custom of separately billing for the services of paralegals ....," and requires courts to scrutinize the reported hours and the suggested rates in the same manner it does for lawyer time and rates. *Ramos v. Lamm,* 713 F.2d 546, 558-59 (10th Cir.1983), *overruled on other grounds by Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,* 483 U.S. 711 (1987). The Supreme Court has also noted that "[p]urely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them." *Missouri v. Jenkins,* 491 U.S. 274, 288 n. 10 (1989). This is obviously especially important in bankruptcy cases, because

for the Court or interested parties to determine the reasonableness of his fees. Notwithstanding these concerns, the Court has independently reviewed the time estimates, and will allow $3,375 in fees in the *Rhinehart* case ($2,925 + 450) through January 21, 2007. The Trustee's objection is thus overruled.

***Smith* fees**

Mr. Brunton originally sought $2,500 in the *Smith* case. His re-created time records show 16.5 hours expended, of which approximately 3.7 hours appear to be tasks that could and should have been performed by trained staff. Again, using the blended hourly rate of $150, the Court has calculated that fees through January 21, 2007 would total $2,475. The Court thus overrules the Trustee's objection to the requested $2,500 fee, and allows fees of $2,925 ($2,475 + $450) for work completed through January 21, 2007.

***Johnson* fees**

Mr. Brunton originally sought $2,500 in the *Johnson* case. His re-created time records show 15.5 hours expended, of which 3.5 hours could and should have been performed by trained staff. Again, using a blended hourly rate of $150, the Court has calculated that the reasonable fees through January 21, 2007 total $2,775 ($2,325 + $450). The Court thus overrules the Trustee's objection to the originally requested $2,500 fee, and allows fees of $2,775 for all work in this case except for work that will require court-related time in the future.

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every dollar spent on legal services is a dollar less for the creditors. *In re Bennett Funding Group, Inc.,* 213 B.R. 234, 247 (Bankr. N.D.N.Y.1997).

Harper fees

Mr. Brunton originally sought $2,500 in the *Harper* case. His re-created time records show approximately 14.5 hours of work, of which 3.3 could and should have been performed by trained staff. Again, using the blended rate, the Court has calculated that the reasonable fee for completing this case, through January 21, 2007, assuming no additional court-related time is required, is $2,625 ($2,175 + 450). The Court thus overrules the Trustee's objection to the originally requested $2,500 fee, and allows fees of $2,625 for all work in this case except for work that will require court-related time in the future.

Jones fees

Mr. Brunton originally sought $2,500 in the *Jones* case. His re-created time records show approximately 14.8 hours of work, of which 3.5 hours could and should have been performed by trained staff. Again, using the blended rate, the Court has calculated that the reasonable fee for completing this case, through January 21, 2007, assuming no additional court-related time is required, is $2,677 ($2,220 + 450). The court thus overrules the Trustee's objection to the originally requested $2,500 fee, and allows fees of $2,670 for all work in this case except for work that will require court-related time in the future.

FEES FOR POST-CONFIRMATION WORK

The Court would also like to use the vehicle of this decision to express its opinion about the practice that has developed in this division where debtor's counsel adds a one sentence prayer at the end of most affirmative motions (to abate, to incur debt, to add debt, to retain a tax refund, to modify a plan, etc.) and most defensive filings (responses to motions

to dismiss, motions for relief from stay, motions to compel, etc) seeking additional fees. The Court has allowed this practice, because in many instances, the Court could take judicial notice that the time requested, to meet with a client to discuss how to deal with a default, or a motion for relief from stay, for example, and then filing a motion, notice of objection deadline on a motion, allowing the time to run and then drafting and submitting an order in offensive motions, was inherently reasonable.

The problem is that the amounts requested are increasing, and more importantly, most attorneys are providing almost no information on which the Trustee, or this Court, can determine reasonableness. For example, this very week the Court was asked to approve $500 in fees tacked to a Motion to Abate, with no recitation whatsoever of the amount of time that was involved in handling the matter, and who in the firm performed which work. Sometimes the fee requested is $75 for these tasks, and sometimes it is $500—and nowhere is it explained to the Court, the Trustee or the creditors why that particular fee is justified.

Furthermore, the Court occasionally sees a one paragraph Motion to Abate, for which counsel asks $250 in additional fees, and filed on the same or next date a one paragraph Response to the Trustee's Motion to Dismiss for Default, asking for an additional $250. The inclusion of fees appears to be becoming so automatic that the prayer is contained in the lawyer's forms, without any real thought about how much time has really been expended, and by whom. So, for example, if counsel has a routine form for responding to a motion to dismiss, such as "the debtor will be current with a reasonable period of time," that form should be on a computer and should require almost no attorney time to prepare or file.

In addition, at the time a Motion is filed, how can debtor's counsel really know how much time it will take for the matter to be totally resolved? A recent order submitted to this Court for signature requested $400 in additional attorney fees for a particular motion, and the motion stated that it covered a meeting with client, drafting and filing of the motion and "for any hearing required." The problem with this approach is that if no one objects, and counsel merely has to calendar for the objection time to run, draft and submit an order to the trustee and then to the court, there would be no hearing. Counsel should not be including presumptive time for a hearing in affirmative motions, since there is no way to predict which matters will result in a hearing, or if so, how long the hearing will take (or how many hearings will be required).

If an objection and one or more hearings, or even a trial, is required, then certainly a much higher fee would be reasonable—but the attorney obviously cannot predict the future at the time the motion is filed, and the fee amount is requested. It is for that reason that the Court wishes to see a change in how such fee requests are now sought (in lieu of formal applications, which the Court naturally favors, but which can admittedly be more costly than necessary if another streamlined procedure provides the same guarantees of reliability).

The Court was convinced by the testimony of counsel that preparing a detailed fee application, filing the motion and notice, and then an order, can take upwards of one or more hours. If that is done several times during a single case, even at a rate of $150 (assuming some of the work required is clerical and not billable at the attorney's hourly rate), debtors are paying considerably more for the service actually received (an abatement, a modification,

the denial of a motion for relief from stay, etc.) than if a reliable method can be adopted whereby the attorney gets fairly paid for the services provided, without the attendant costs of those fee applications being passed on to the already financially beleaguered client.

The Court suggests that if a debtor's counsel reasonably determines that the presumptive fee has been "worked off" by services provided to the client, after a fair review of the truly legal work that has been accomplished and the fee already allowed, and wishes to obtain additional fees for work that has been done in a particular case, counsel can follow one of two paths, either of which would be acceptable. First, counsel can file and provide proper notice a customary fee application under Fed. R. Bankr. P. 2016(a), setting forth a detailed statement of the services rendered, time expended and expenses incurred from the inception of the case, and the amounts requested.

Alternatively, counsel can include in a motion (to abate, to cure a post-petition default, to modify a plan, etc.), or in a response to a motion (for relief from stay, to compel, etc.), language seeking additional fees for the work reasonably connected only with that discrete issue, again setting forth a statement of the services rendered, whether the service was rendered by a lawyer or paraprofessional, the time expended and expenses incurred and at what general hourly rates, and the ultimate amount requested. The Court further agrees with the Trustee's suggestion that debtor's counsel could indicate a range of possible fees necessary, in the motion or response, noting that if no hearing is required, the fees could be x, but if a hearing(s) was required, the fees could be x plus $300 (or whatever amount is reasonable, depending on how many cases that attorney routinely has on given dockets, the

complexity of the issues, the difficulty of dealing with the particular debtor or creditor, etc.). Then, after the matter is concluded, the attorney could then indicate in the proposed order regarding fees a description of what services were actually performed, by whom, and the amount being requested as a result of that work.[24]

If this option is used, debtor's counsel should insert language that essentially certifies to the effect that he or she has "reviewed this file and have determined, in light of the hours expended and my normal hourly rate (and/or the rate of any legal assistant who has worked on this file other than for purely clerical purposes) that I and/or my staff have provided legal services to the debtor(s) in this case that consume the fees previously allowed, other than any routine post-confirmation work for which the Court has presumed $450 to be a reasonable fee." With that information, the Trustee, when reviewing a proposed order granting or denying the relief on a particular matter, as well as this Court, can reasonably determine if the additional fees should be allowed.

Nothing in this Order would preclude the trustee, the Court, or any creditor from challenging the allowance and payment of either the presumptive fee, another fee, or the additional fees requested in a discrete motion, in any case where it is believed the fee requested is undeserved, unearned, or unreasonable. Because the Court's later evaluation of such challenges may require review of debtor's counsel's time records, debtors' counsel are advised to proceed accordingly. This procedure will have as a side-benefit, over the

[24]The Trustee, upon questioning, indicated he would not approve an order in excess of the range requested in the motion, and in that instance, debtor's counsel would be required to file a motion for any excess fees actually incurred.

procedure now widely being used, of more concisely informing the debtor client of the amount of time, and attendant cost, the debtor's problems are costing the debtor, himself, which could serve to motivate the debtor to be more cautious in requiring counsel to solve all the debtor's post-petition problems.

CONCLUSION

Granting Messrs. Hinck and Brunton's request to spread the risk of a time-consuming confirmation process evenly among all their clients might be easiest for them, but the Court does not believe that is the most fair result for their clients, and declines to adopt their position. Generally speaking, the debtor who requires the work should be the one who pays for the work, and conversely, the debtor who is compliant and does what his attorney suggests (and the court requires) should not pay for the services required by a less compliant debtor, or one who develops new financial problems during the pendency of their case.

With this order, the Court does not require counsel to maintain contemporaneous time records. If counsel chooses not to keep contemporaneous time records, however, they run some risk that their requested time might be discounted on the basis of accuracy. That said, the Court does accept re-created time records so long as they are based on demonstrable reality.

Both Mr. Brunton and Ms. Michaux, for example, testified that their offices have rather sophisticated computer programs that keep track of every matter that occurs in each case–whether it be filing of a motion, receipt of a pleading, receipt or making of telephone calls, attending hearings, etc. Mr. Hooge indicated that once it becomes apparent that

additional fees will likely be required, he begins to keep pen and paper notes in the file documenting his time. From these entries, these counsel are then able, based on their experience, to generally estimate the amount of time a particular task took. It certainly seems, however, that keeping contemporaneous time records would in the long run be the easiest, and certainly the most reliable, way to actually know the amount of time being spent on any given client matter, and to bear the burden of demonstrating the reasonableness of the fees that must be sought post-confirmation. That is a business decision, however, and this Court declines to second guess the practitioners' judgment on this issue.

IT IS, THEREFORE, ORDERED that the Trustee's objection to the fees in the *Beck* case is sustained for any amount over $3,382 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Torrez* case is sustained for any amount over $3,340 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Shannon* case is sustained for any amount over $2,980 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *McGovern* case is sustained for any amount over $2,275 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *McMaster* case is sustained for any amount over $2,672 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Rhinehart* case is overruled, and Mr. Brunton is allowed a fee of $3,375 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Smith* case is overruled, and Mr. Brunton is allowed a fee of $2,925 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Johnson* case is overruled, and Mr. Brunton is allowed a fee of $2,775 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Harper* case is overruled, and Mr. Brunton is allowed a fee of $2,625 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the Trustee's objection to the fees in the *Jones* case is overruled, and Mr. Brunton is allowed a fee of $2,670 for work through January 21, 2007, which includes an expected $450 for non-court related post-confirmation work.

IT IS FURTHER ORDERED that the foregoing constitutes Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. A judgment based on this ruling will be entered

on a separate document in each case, as required by Fed. R. Bankr. P. 9021 and Fed. R. Civ. P. 58.

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EXHIBIT A

Hinck cases (all under median cases)

Case # and date filed	**Fees on 1-21-07 & Fees sought**	**Hours (Asst & atty)**	**Date oral conf confirmation**	**Obj conf/issues other than fees**
06-40774 *Beck*[25] 8/17/06	$3037/$3450 + $175/hour + 2006 tax refund assignment	20.4[26]	11-21-06 (1st time up)	house delinquency and non-910 car
06-40791 *Torrez* 8/21/06	2,890/$3450 + $175/hour + 2006 tax refund assignment	20.3[27]	10-25-06 1st time up (Cr Un obj resolved w/out addtl hrg)	Cr Union One obj conf 910 car
06-40824 *Shannon* 8/26/06	$2,530/3450 + $175/hour + 2006 tax refund assignment	16.1[28]	1-24-07	Liquidation value necessary; no secured creditors
06-40825 *McGovern* 8/26/06	$1,825/$3250 + $175/hour + 2006 tax refund assignment	13.0[29]	11-14-06	Dell computer only secured claim
06-40841 McMaster 8/29/2006	$2,222/$3450 + $175/hour + 2006 tax refund assignment	16.1[30]	10-25-06	Co-debtor car to be paid in full

[25]On February 2, 2007, Trustee filed a post-confirmation Motion to Dismiss for Default (Doc. 32).

[26]Mr. Hinck does keep contemporaneous track of his time. The approximate blended rate for his time and his assistant's time in this case comes to $148/hour.

[27]The blended rate, based on the fee records presented in this case, is $142.

[28]The blended rate is $157.

[29]The blended rate is $140.

[30]The blended rate is $138.01. If one adds all the blended rates together, the hourly rate this firm is charging on what they describe as "average to basic cases" is $144.33 per hour, or about 83% of the attorney's own hourly rate.

Brunton cases (all under median cases)[31]

Case # and date filed	**Fees on 1-21-07 & Fees sought**	**Hours (Asst & atty)**	**Date oral conf confirmation**	**Obj conf/issues other than fees**
06- 40792 *Rhinehart* 8/21/06	$2,925/3,000	19.5 (18 through conf + 1.5 post-conf; appx 3.65 hr non-lawyer time	10-25-06	Non-910 car +house delinquency + Motion to Extend Stay
06-40829 *Smith* 8/28/06	$2,475/2,500	16.5 (appx 3 non-lawyer)	10-25-06	No secured or priority debt
06- 40830 *Johnson* 8/28/06	$2,325/2,500	15.5(appx 3.5 non-lawyer)	10-25-06	No secured debt; $550 priority claim
06-40831 *Harper* 8/28/06	2,175/$2,500	14.5 (appx 3.3 non-lawyer)	10-25-06	No secured or priority debt
06-40840 *Jones* 8/29/06	$2,276/$2,500	14.85 (appx 3.5 non-lawyer)	10-25-06	No secured or priority debt

[31]Mr. Brunton does not keep contemporaneous time records, so this is an amalgamation of estimates of his time and his staff's time. Although Mr. Brunton guessed his hourly rate would be $250 in the Topeka market, the Court believes, based on all the evidence, that for someone with Mr. Brunton's education, experience, and skills, the more appropriate rate is $180 to $200 per hour. The Court believes that $40-$50/hour for paralegal or legal assistant's time is reasonable based on the Topeka market, depending on the education, training, and experience of the paralegal or legal assistant. Some of the time sought does not require even a paralegal's education and training, such as making corrections to a form filled out by someone else, mailing tax returns to a taxing entity, sending a letter reminding client of a § 341 hearing, preparing a receipt, making calendar entries, electronically uploading and filing documents, and the like. Because Mr. Brunton does not differentiate what tasks were done by whom on his re-creation of time spent, which is his burden when his fees are challenged, the Court will use a blended rate of $150/hour to determine reasonableness of his fees ($190/hour x 83% of the time—using Mr. Hinck's approximate percentage of time spent on average cases, as compared with legal assistants, reduced a bit by the fact that some of the non-lawyer time should be performed by clerical staff). No Court can be this precise in every case, and this Court does not want to have to be forced to review hundreds of fee applications on routine Chapter 13 cases because of the incredible inefficiencies of doing so. This exercise, and these estimates, are, instead, meant to give perspective to the Court's ultimate findings.