AMERICAN BANKRUPTCY INSTITUTE

Southwest Bankruptcy Conference

CONCURRENT SESSION

Chapter 13 Pre- and Post-Confirmation Issues

Hon. Martin R. Barash
U.S. Bankruptcy Court (C.D. Cal.) | Woodland Hills

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2024

Chapter 13 Pre- and Post-Confirmation Issues Panel

Additional Pre-Filing Issues

1. **Knowing Your Responsibilities as a Debt Relief Agent and an Attorney**
   a. Debt Relief Agency – Includes both Attorneys and petition preparers. § 101(12A).
      i. Review the Restrictions, Disclosures, and other Requirements of §§ 526-528.
         1. Does your advice run afoul of § 526(a)(1)-(4), and specifically subsection (4)?
         2. Are you providing written notice under § 342(b)(1) to all prospective clients (not just those who retain), and doing so timely? § 527(a)(1)-(2).
         3. Does your Retainer Agreement clearly and conspicuously explain the services to be provided and the fees/charges for such services? § 528(a)(1)(A)-(B).
   b. Due Diligence - § 707(b)(4)(D)
      i. Strive to be a better sleuth than the Trustee will be—it's worth it.
      ii. Search public records for potential issues (prior to the consultation if possible).
      iii. Client Questionnaires are only a starting point. Scrutinize the information.
   c. Local Rules and General Orders
      i. Trustee's Guidelines, Rights and Responsibilities, Fixed Fee Schedules
      ii. Adequate Protection Guidelines or Requirements
      iii. Potentially Overlapping or Conflicting Local Rules to Navigate

2. **Establishing Clear Expectations Early Helps Avoid Retaining Problem Clients**
   a. Articulate reasonable but firm expectations regarding communications, full disclosures, cooperation, and providing of documents timely as requested.
   b. Hone your radar for determining whether a prospective client will commit to the process.
      i. In Chapter 13, collection of unpaid fees depends on the client's performance – not yours.
      ii. Quoting higher retainer fees to potentially difficult clients can mitigate risks of loss.
   c. Declining Representation with Professionalism
      i. "Due to the number of pending matters we are currently handling, we do not believe we will have adequate time and resources to take on your matter."
      ii. "It is our policy to decline representation on any matter where we do not feel confident that we can invest all of the time and energy necessary to do the best possible job for you."
      iii. "We sincerely appreciate your interest in retaining our services to assist you, but at this time we believe your interests would be better served by providing you referrals to other firms that may have sufficient time and resources to commit to your matter."

3. **Prior Filings and the Automatic Stay**
   a. **<u>One Dismissal Within Year</u>** – Stay terminates in 30 days unless extended by Motion. § 362(c)(3)(A).
      i. Discuss with Client – Any facts supporting a Motion to Continue Stay?
      ii. **Don't blow the deadlines and know the evidentiary standard!**
         1. Deadlines: Motion must be filed ***<u>and</u>*** "hearing completed before the expiration of the 30-day period" after the Petition. § 362(c)(3)(B).
         2. Standard: Preponderance of evidence standard applies unless presumption arises under § 362(c)(3)(C)(i)-(ii).
      iii. Have the Motion to Continue Stay and all supporting evidence ready to file immediately after the Petition.
         1. Move for an Order Shortening Time if necessary, but make sure to know your Local Rules in addition to Fed. R. Bankr. P. 9006.

iv. Discuss ramifications and options of stay not being continued (both as to all creditors or as to a particular creditor).
    1. The Race to Confirmation: Provisions of confirmed plan "bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." § 1327(a).
    2. Offering adequate protection, surrender, etc.

b. **Two Dismissals Within Year** – No automatic stay imposed by filing of Petition. § 362(c)(4)(A).
    i. Discuss with Client – Any facts supporting a Motion to Impose Stay?
    ii. **Don't blow the deadline and know the heightened evidentiary standard!**
        1. Deadline: Motion must be filed within 30 days of Petition. § 362(c)(4)(B).
        2. Standard: Clear and convincing evidence standard applies by default with two prior dismissals within year. § 362(c)(4)(D)(i)(I).
    iii. Even if Motion is granted, stay will become effective upon entry of the Order (not the Petition date). § 362(c)(4)(C).
    iv. Discuss ramifications and options of stay not being imposed (both as to all creditors or as to a particular creditor).
        1. The Race to Confirmation. § 1327(a).
        2. Offering adequate protection, surrender, etc.

Exhibit "A"

Office of Kathleen A. Leavitt, Chapter 13 Trustee

REQUIRED DOCUMENT LIST FOR CHAPTER 13 CASES

Use this cover sheet with *every* delivery of document

Debtor(s) Name: _____ Date Submitted: _____
Case Number: _____ 341 Meeting Date: _____

****ALL documents must be received by the Trustee's office at least 7 days prior to the 341 meeting. ****

COPIES OF:

____ Bank statements covering the date of filing and the preceding three (3) months;
____ Pay stubs for the six (6) months preceding the month of filing;
____ **Redacted** Tax Returns or Tax Affidavits filed with the IRS for the two (2) years prior to filing (**redact all social security numbers except for the last 4 digits)**;
____ Completed Chapter 13 Trustee Bankruptcy Questionnaire & Document Request (form available at www.las13.com);

ADDITIONAL DOCUMENTATION, IF APPLICABLE:

____ Verification of all sources of income;
____ Documentation regarding Life Insurance;
____ Valuation of any Real Property, wherever located;
____ Sworn Affidavit of Support/Contribution from contributing source;
____ Valuation of vehicles;
____ Lease/Rental agreement for all rental properties to be retained;
____ Documentation relating to support of third party;
____ Documentation as to pending or potential legal action/litigation brought by the debtor;
____ Documents relating to repayment of any retirement account loans;

In Conduit Cases or cases where arrears are owed on secured debts:

____ Authorization to Release Information, Conduit Creditor Information Worksheet, and a copy of the most current statement the debtor received from the Conduit Creditor (forms available at www.las13.com);

In cases where there is a divorce, child support and/or alimony order:

____ Divorce Decree and any Property Settlement Agreements and Orders;
____ Court Order for child support, alimony, or other domestic support obligation;
____ Name and address of Domestic Support Obligation recipient. (Form available on www.las13.com)

BUSINESS DOCUMENTATION, IF APPLICABLE**:**

____ Detailed list of assets, inventory, supplies, equipment, and accounts receivable with values as of the date of filing;
____ Business tax returns filed with the IRS for the four years prior to filing;
____ Monthly profit & loss statements for the 6 months prior to the date of filing;
____ Business bank statements covering the date of filing and the preceding 6 months;
____ Balance sheet showing the assets & liabilities of Corporation/LLC/Partnerships;
____ Any UCC filing documents.

Please refer to the Trustee's Guidelines available at www.las13.com for further information regarding the required documents and procedures**.**

Trustee reserves the right to request additional documentation not listed above.

NOTES: _____

Revised 12-11-2023 SEA

NVB#113 (rev. 12/17)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	BK -
Debtor 1 -	Chapter 13 Plan #
Debtor 2 -	Confirmation Hearing Date:
	Confirmation Hearing Time:
Debtor.	

CHAPTER 13 PLAN

Section 1: Notices

1.1 - Valuation of Collateral and Lien Avoidance Requires a Separate Motion - The confirmation of this plan will not limit the amount of a secured claim based on a valuation of the collateral for the claim, nor will it avoid a security interest or lien.

1.2 - Nonstandard Provisions - This plan ☐ **includes** ☑ **does not include** nonstandard provisions in Section 9.2.

Section 2: Eligibility, Commitment Period, Disposable Income, Plan Payments, and Fees

2.1 - Statement of Eligibility to Receive a Discharge

a. Debtor 1: Is eligible to receive a Chapter 13 discharge.

b. Debtor 2: Is eligible to receive a Chapter 13 discharge.

2.2 - Applicable Commitment Period - The applicable commitment period is 60 months. Monthly payments must continue for the entire commitment period unless all allowed unsecured claims are paid in full.

2.3 - Disposable Income - Debtor is over median income. Debtor's monthly disposable income of multiplied by the applicable commitment period equals $0.00

2.4 - Liquidation Value - The liquidation value of the estate is $0.00 Liquidation value is derived from the following non-exempt assets:

2.5 - Monthly Payments - Debtor shall make monthly payments to the Trustee as follows:

$	for	months commencing	- Totaling $
$	for	months commencing	- Totaling $
$	for	months commencing	- Totaling $
$	for	months commencing	- Totaling $
$	for	months commencing	- Totaling $
$	for	months commencing	- Totaling $

2.6 - Additional Payments - Debtor will make additional payments to the Trustee from other sources as specified below.

Amount of Payment	Date	Source of Payment

2.7 – The total amount of plan payments to the Trustee _____

2.8 - Tax Returns and Refunds - Debtor shall submit to the Trustee, within 14 days of filing the return, copies of all personal and business tax returns filed with any federal or state taxing authority for the prior tax year, along with copies of any W-2 forms, 1098 forms, and 1099 forms. In addition to plan payments, Debtor shall turn over to the Trustee and pay into the plan the non-exempt portion of all tax refunds for the following tax years: 2017 , 2018 , 2019 , 2020 , 2021

2.9 – Trustee's Fees – Trustee's fees are estimated to be 10% of plan payments, which totals: $0.00 Trustee shall collect these fees from payments received under the plan.

2.10 - Debtor's Attorney's Fees - Debtor's attorney's fees, costs, and filing fees in this case shall be . The sum of has been paid to the attorney prior to the filing of the petition. The balance of shall be paid through the plan by the Trustee.

2.11 – Additional Attorney's Fees - For feasibility purposes, additional attorney fees are estimated to be These fees are for services that are specifically excluded on the Disclosure of Compensation of Attorney for Debtor(s) [Form B2030]. These fees will not be reserved by the Trustee unless a request for these fees is properly filed with the Court.

2.12 - Other Administrative Expenses - All approved administrative expenses, including Mortgage Modification Meditation Program fees, shall be paid in full unless the holder of such claim agrees to accept less or 11 U.S.C. §1326(b)(3)(B) is applicable.

Creditor's Name	Services Provided	Amount Owed

Section 3: General Treatment of Claims

3.1 - Claims Must be Filed and Provided for - A proof of claim must be filed in order for the claim to be paid pursuant to this plan. If a filed proof of claim is not provided for by this plan, no payments will be made to the claimant.

3.2 - Payment of Claims is based upon the Proof of Claim - The amount and classification of a creditor's claim shall be determined and paid based upon its proof of claim unless the court enters a separate order providing otherwise.

3.3 - Interest on Claims - If interest is required to be paid on a claim, the interest rate shall be paid in accordance with the Chapter 13 Plan unless a separate Order of the Court establishes a different rate of interest. Interest shall accrue from the petition date on claims secured by property with a value greater than is owed under contract or applicable non-bankruptcy law. For all other claims, interest shall accrue from the date the plan is confirmed unless otherwise ordered by the Court.

3.4 - Payments made by Trustee - Unless otherwise stated, claims provided for in this plan shall be paid by the Trustee.

Section 4: Treatment of Secured Creditors

4.1 - Conduit Payments - The monthly contractual installment payments, including Mortgage Modification Meditation Program payments, ("conduit payments") will be paid as follows: (a) Trustee will make monthly post-petition installment payments on claims as they come due; (b) the first monthly installment payment of the total number of payments listed below shall be treated and paid as a conduit gap payment; (c) Trustee will not make a partial conduit payment; (d) if all conduit payments cannot be made, Trustee will prioritize disbursements by making conduit payments to creditors in the order in which they are listed below; (e) a Notice of Payment Change must be filed to effectuate a monthly payment change; and (f) in the event that the conduit payment increases, Debtor shall increase the plan payments to the Trustee without modification of the plan.

Creditor Name Collateral Description	Principal Residence	Conduit Payment Amount	Number of Conduit Payments	Conduit Start Date	Estimated Total
	Yes				

4.2 - Pre-Petition Arrearages - Including claims for real and personal property, taxes, HOA fees, and public utilities.

Creditor Name Collateral Description	Pre-Petition Arrearage	Interest Rate	Estimated Total
			$0.00

4.3 - Modified Claims - Including claims paid based upon 11 U.S.C. §506 valuation or other agreement.

Creditor Name Collateral Description	Full Claim Amount	Fair Market Value	Interest Rate	Estimated Total
				$0.00

4.4 - Claims Modified and Paid in Full - Including secured tax liens and claims secured by purchase money security interest that were (a) incurred within 910 days preceding the filing of the petition and secured by a motor vehicle acquired for personal use of the debtor, or (b) incurred within 1 year preceding the filing of the petition and secured by any other thing of value.

Creditor Name Collateral Description	Full Claim Amount	Interest Rate	Estimated Total
			$0.00
			$0.00
			$0.00

4.5 - Post-Petition Claims - Including claims provided for under §1305(a), such as taxes that become payable to a governmental unit while the case is pending, delinquent post-petition mortgage payments, and estimated 3002.1(c) Fees, Expenses, and Charges.

Creditor Name Collateral Description	Claim Amount	Interest Rate	Estimated Total
			$0.00

4.6 - Claims Paid Directly by Debtor or Third Party

Creditor Name Collateral Description	Contractional Monthly Payment Amount	Maturity Date

4.7 - Surrender of Collateral - Debtor surrenders the real or personal property listed below. Upon confirmation of this plan, the stay terminates under §362(a) and §1301 with respect to the surrendered collateral listed below.

Creditor Name	Description of Collateral	Estimated Deficiency

Section 5: Treatment of Unsecured Creditors

5.1 - Priority Claims Paid in Full

Creditor Name Collateral Description	Full Claim Amount	Interest Rate, if Applicable	Estimated Total
			$0.00

5.2 - Domestic Support Obligations Assigned or Owed to a Governmental Unit - Including claims that will be paid less than the full amount pursuant to §1322(a)(4). These claims will be paid in the amount listed below

Creditor Name Collateral Description	Full Claim Amount	Amount to be Paid by Plan

5.3 - Specially Classified Non-Priority Unsecured Claims - The allowed non-priority unsecured claims listed below are separately classified and will be treated as follows.

Creditor Name Collateral Description	Basis for separate classification and treatment	Amount to be Paid	Interest Rate	Estimated Total
				$0.00

5.4 - Non-Priority Unsecured Claims - Allowed general non-priority unsecured claims shall be paid a pro-rata share of the funds remaining after disbursements have been made to all other creditors provided for in this plan. This amount may change based upon the allowed claim amounts, amended claims, interest rates, additional attorney's fees, and/or other administrative expenses. Debtor estimates that $0.00 will be available for non-priority unsecured claims that are not specially classified.

☐ Debtor shall pay 100% of all filed and allowed non-priority unsecured claims.

☐ Debtor's estate is solvent under §1325(a)(4) and non-priority unsecured claims shall receive interest at

Section 6: Executory Contracts and Unexpired Leases

6.1 - Debtor's Election - Debtor assumes or rejects the executory contracts and unexpired leases listed below. Any executory contract or unexpired lease not listed below is rejected. Debtor shall timely pay all amounts due under any accepted executory contract or unexpired lease

Lessor's Name / Collateral Description	Assume/Reject	Expiration Date

Section 7: Distribution of Plan Payments

7.1 - Distributions - After confirmation, funds available for distribution will be paid monthly by the Trustee.

7.2 - Order of Distribution -Trustee will pay as funds are available in the following order:

a. Conduit payments (§4.1);
b. Monthly payments on secured claims as required by separate court order (§9.2);
c. Attorney Fees and Administrative Expenses (§2.10, §2.11, §2.12);
d. Modified Claims and Claims Modified and Paid in Full (§4.3, §4.4);
e. Conduit gap payments and Post-Petition claims (§4.1, §4.5);
f. Pre-Petition Arrearage claims (§4.2);
g. Priority claims (§5.1, §5.2);
h. Separately Classified Unsecured Claims (§5.3);
i. Non-Priority Unsecured Claims (§5.4).

Section 8: Miscellaneous Provision

8.1 Debtor Duties - In addition to the duties imposed upon Debtor by the Bankruptcy Code and Rules, the Local Bankruptcy Rules, Administrative Orders, and General Orders, the Plan imposes the following additional duties:

a. Transfer of Property and New Debt - Debtor is prohibited from transferring, encumbering, selling or otherwise disposing of any nonexempt personal property with a value of $1,000 or more or real property with a value of $5,000 or more without court approval. Except as provided in §364 and §1304, Debtor may not incur new debt exceeding $1,000 without court

approval.

b. Insurance and Taxes - Debtor shall pay all post-petition tax obligations and maintain insurance as required by law or contract. Debtor shall provide evidence of such payment to Trustee upon request.

c. Periodic Reports - Upon request by the Trustee, Debtor shall provide the Trustee with: proof that direct payments have been made under §4.6 of this plan; information relating to a tax return filed while the case is pending; quarterly financial information regarding Debtor's business or financial affairs; and a §521(f)(4) statement detailing Debtor's income and expenditure for the prior tax year.

d. Funds from Creditors - If Debtor receives funds from a creditor which were previously disbursed to the creditor by the Trustee, Debtor shall immediately tender such funds to the Trustee and provide a written statement identifying the creditor from whom the funds were received.

8.2 Creditor Duties - In addition to the duties imposed upon a Creditor by Federal law, State Law, and contract, the Plan imposes the following additional duties:

a. Release of Lien - The holder of an allowed secured claim, provided for in §4.3 or §4.4, shall retain its lien until the earlier of the payment of the underlying debt as determined under non-bankruptcy law or discharge under §1328. After either one of the foregoing events, the creditor shall release its lien and provide evidence and/or documentation of such release to Debtor within 30 days. In the event the creditor fails to timely release the lien, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released.

b. Refund all Overpayments to the Trustee - Creditors shall not refund any payments or overpayments to the Debtor.

1. If a creditor withdraws its Proof of Claim after the Trustee has disbursed payments on such claim, the creditor shall refund all payments to the Trustee within 60 days of the withdrawal.
2. If a creditor amends its Proof of Claim to assert an amount less than what was previously disbursed by the Trustee on such claim, the creditor shall refund the overpayment to the Trustee within 60 days of the amendment.
3. If a creditor receives payment from the Trustee in excess of the amount asserted in its Proof of Claim or required to be paid under this Plan, the creditor shall refund the overpayment to the Trustee within 60 days of receiving the overpayment.

8.3 Vesting - Any property of the estate scheduled under §521 shall vest in Debtor upon confirmation of this plan.

8.4 Remedies of Default -

a. If Debtor defaults in the performance of this Plan, the Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Rule 9014.

b. If, on motion of a creditor, the Court terminates the automatic stay to permit a creditor to proceed against its collateral, unless the Court orders otherwise, the Trustee will make no further distribution to such secured claim.

c. Any deficiency claim resulting from the disposition of the collateral shall be paid as a non-priority unsecured claim provided that a Proof of Claim or Amended Proof of Claim is filed, allowed, and served on Debtor. Such deficiency claim shall be paid prospectively only, and chapter 13 plan payments previously disbursed to holder of other allowed claims shall not be recovered by the Trustee to provide a pro-rata distribution to the holder of any such deficiency claims.

8.5 Plan Extension Without Modification - If the plan term does not exceed 60 months and any claims are filed in amounts greater than the amounts specifically stated herein, Debtor authorizes the Trustee to continue making payments to creditors beyond the term of the plan. Debtor shall continue making plan payments to the Trustee until the claims, as filed, are paid in full or until the plan is otherwise modified.

Section 9: Nonstandard Plan Provision

9.1 Check Box Requirement - Nonstandard plan provisions will be effective only if §1.2 of this plan indicates that this plan includes non-standard provisions. Any nonstandard provision placed elsewhere in the plan is void.

9.2 Nonstandard Plan Provisions:

Section 10: Signatures

Executed on:

[Debtor 1 Signature]

[Debtor 2 Signature]

By filing this document, I certify that the wording and order of the provisions of this Chapter 13 plan are identical to those contained in NVB 113, other than any nonstandard provisions set forth in §9.

[Signature]

[Debtor Attorney or Pro Se Name]

[Firm Name]

[Address Line 1]

[Address Line 2]

[Phone Number]

[Email]

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-2263

SHEILA ANN TRANTHAM,

Debtor – Appellant,

v.

STEVEN G. TATE,

Trustee – Appellee.

NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS; NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER,

Amici Supporting Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Max O. Cogburn, Jr., District Judge. (1:22−cv−00076−MOC)

Argued: May 8, 2024 Decided: August 13, 2024

Before DIAZ, Chief Judge, WILKINSON, Circuit Judge, and MOTZ, Senior Circuit Judge.

Reversed and remanded by published opinion. Chief Judge Diaz wrote the opinion in which Judge Wilkinson and Senior Judge Motz joined. Judge Wilkinson wrote a concurring opinion.

Robert Todd Mosley, MOSLEY LAW FIRM, P.C., Asheville, North Carolina, for Appellant. Bonnie Keith Green, THE GREEN FIRM, PLLC, Charlotte, North Carolina, for Appellee. Richard Preston Cook, RICHARD P. COOK, PLLC, Wilmington, North Carolina, for Amici Curiae.

DIAZ, Chief Judge:

Sheila Ann Trantham filed a Chapter 13 bankruptcy plan proposing that the bankruptcy estate's property vest in her at plan confirmation. Although the Bankruptcy Code permits such a provision, the Trustee objected because the local form plan adopted by the bankruptcy court requires that the estate's property vest when the court enters a final decree.

The bankruptcy court held that a debtor can't propose a plan that contradicts the local form's default vesting provision. The district court agreed. We do not. So we reverse the district court's order, and remand for further proceedings.

I.

Trantham petitioned for Chapter 13 bankruptcy in the Bankruptcy Court for the Western District of North Carolina. Under that Chapter, the debtor proposes a plan that uses her future income to repay a portion of her debts. *See* 11 U.S.C. §§ 1321–1322(a). If the bankruptcy court confirms the plan, and the debtor completes all payments, then the court discharges any debt provided for by the plan (unless otherwise exempt). *See id.* § 1328. After discharge, the court enters its final decree, which closes the debtor's case. *Cf., e.g.*, *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 298 (4th Cir. 2017).

Trantham proposed a repayment plan using the bankruptcy court's required form plan, Local Form 4. The Form's vesting provision says that "[a]ll property of the Debtor remains vested in the estate and will vest in the Debtor upon entry of the final decree." J.A.

61. Trantham struck through that provision and instead proposed that the property of the estate vest at confirmation.

But the Trustee[1] objected to Trantham's plan because her changes to the vesting schedule "contradict[ed] the plan form language" in Local Form 4. J.A. 64. The bankruptcy court sustained the objection.

The court acknowledged that debtors can propose nonstandard provisions that deviate from the local form. And it found that Trantham's proposed vesting provision was "not contrary to" the Bankruptcy Code. J.A. 71. But the court explained that default provisions are essential for "efficiency and consistency" and that the Form's prewritten vesting provision was the court's "long-standing policy." J.A. 72. Because Trantham "provide[d] no explanation supporting her choice to vest property of the estate at confirmation and [did] not demonstrate[] why the Local Form should be changed in this case," the court held that Trantham's changes to the Form were "inappropriate." J.A. 72.

Trantham amended her plan to conform with Local Form 4, although she expressly reserved her right to appeal the court's decision post-confirmation. The bankruptcy court later confirmed the amended plan.

Trantham appealed, and the district court affirmed. The district court explained that many "risks and practical problems would arise" if property vested in the debtor at

[1] A trustee acts as the administrative officer of the bankruptcy case. *See* 11 U.S.C. § 1302; *Van Arsdale v. Clemo*, 825 F.2d 794, 797–98 (4th Cir. 1987). Her role is to advise the bankruptcy court with respect to the proposed plan and to oversee the performance of the confirmed plan, such as by ensuring that the debtor makes timely payments, acting as the disbursing agent, and advising the debtor on case-related matters. *See* § 1302(b).

confirmation, noting that the property would be vulnerable to creditors and the trustee would lack sufficient oversight. *Trantham v. Tate*, 647 B.R. 139, 145–46 (W.D.N.C. 2022). And the court reasoned that if property vested in the debtor at confirmation, then 11 U.S.C. § 1306(a)'s mandate that the property of the estate include the debtor's earnings and properties acquired between petition and final decree would be "rendered meaningless." *Id.* at 146–47.

So the district court held that any plan that includes a nonstandard provision that contradicts the Form's default vesting provision "cannot be confirmed." *Id.* at 145. But it also held that Trantham lacked standing to appeal the bankruptcy court's ruling because she hadn't shown any injury arising from having to conform to the Form's default vesting provision.

This appeal followed.

II.

A.

We review the judgment of a district court sitting in review of a bankruptcy court de novo, applying the same standards that the district court applied. *Copley v. United States*, 959 F.3d 118, 121 (4th Cir. 2020). Thus, "we review the bankruptcy court's legal conclusions de novo, its factual findings for clear error, and any discretionary decisions for abuse of discretion." *Id.*

B.

Before we consider the merits, some context about vesting is necessary. When a debtor files for Chapter 13 bankruptcy, an estate is created that consists of any property (with few exceptions) in which she holds a legal or equitable interest. *See* 11 U.S.C. §§ 541(a), 1306(a). The estate also includes certain property and earnings that the debtor acquires between filing and entry of a final decree. *Id.* § 1306(a). Creditors can't pursue collection actions against any property of the estate. *See id.* § 362.

The Code permits the debtor to include a vesting provision in her plan. *See id.* § 1322(b)(9). The debtor can provide for vesting "on confirmation of the plan or at a later time, in the debtor or in any other entity." *Id.* But if the debtor says nothing about vesting, and the order confirming the plan is silent, then the Code's default rule is that property vests in the debtor at confirmation. *Id.* § 1327(b).

The debtor generally remains in possession of all property of the estate. *See id.* § 1306(b). But the debtor can't "use, sell, or lease" that property outside of "the ordinary course of business" unless she receives permission from the court after "notice and a hearing." *See id.* §§ 363(b), 1303.

On the other hand, when property vests in the debtor, it vests "free and clear of any claim or interest of any creditors provided for by the plan." *See id.* § 1327(b)–(c). While the property is no longer protected from creditors, the debtor is free to use, sell, or lease that property as she sees fit. That said, we've held that when a debtor experiences a "substantial and unanticipated" change of income from selling property that vested in him at plan confirmation, the trustee maintains the ability to seek to modify the debtor's plan

so that unsecured creditors can recoup such income. *See Murphy v. O'Donnell (In re Murphy)*, 474 F.3d 143, 154 (4th Cir. 2007).

III.

Trantham raises two issues on appeal. First, she disputes the district court's ruling as to standing. Second, she argues that the bankruptcy court violated the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure by holding that Local Form 4's vesting provision is mandatory. We address each contention in turn.

A.

Because standing is jurisdictional, we start there. *See O'Leary v. TrustedID, Inc.*, 60 F.4th 240, 242 (4th Cir. 2023). We review a district court's decision on appellate standing de novo. *Bestwall LLC v. Off. Comm. of Asbestos Claimants (In re Bestwall LLC)*, 71 F.4th 168, 177 (4th Cir. 2023).

In the bankruptcy context, this court has historically required that the appellant establish both constitutional standing and prudential standing, the latter of which is satisfied by showing that she is a "person aggrieved" by the bankruptcy court's order. *Cf. id.* We conclude that Trantham satisfies the former and doesn't need to satisfy the latter.

1.

Start with constitutional standing. The Constitution limits federal courts to hearing cases in which the plaintiff has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct and (3) that is likely to be redressed by a favorable judicial decision." *Kenny v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018) (cleaned up) (quoting

Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016)). At issue here is whether Trantham suffered an injury in fact. She has.

An injury in fact must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). A "bare procedural violation" can't satisfy constitutional standing. *Id.* at 341. But a statutory violation coupled with a "separate harm" or a "materially increased risk of another harm" can. *See O'Leary*, 60 F.4th at 243; *accord Spokeo*, 578 U.S. at 342 ("[T]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact."). When standing depends on a risk of injury, that risk must be "certainly impending" or "substantial." *Kenny*, 885 F.3d at 287 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

Trantham alleges that the bankruptcy court ignored her right to file a plan of her choosing under 11 U.S.C. §§ 1321 and 1322 and to have her plan confirmed so long as it satisfies all Code requirements. And as a result, she claims that her property has been diminished and her procedural burdens have increased.

Under Trantham's plan, her property would have vested in her "free and clear" at plan confirmation. *See* 11 U.S.C. § 1327; *supra* Part II.B. But the bankruptcy court required that vesting occur at final decree, which has yet to happen. So Trantham's property remains encumbered by the interests and claims of her creditors, and her ability to use it outside the ordinary course of business depends on her seeking leave of court. *See* 11 U.S.C. §§ 363(b), 1303; *supra* Part II.B.

To obtain such relief, a debtor must schedule a hearing, *cf.* Fed. R. Bankr. P. 9006(d) (requiring that interested parties have at least seven days' notice of a hearing), and pay applicable fees, *see, e.g.*, *Bankruptcy Court Miscellaneous Fee Schedule*, U.S. Cts., https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule [https://perma.cc/S9MK-KYS3] (last visited June 24, 2024) (requiring a $199 filing fee for a motion to sell property of the estate); *Disclosure to Debtor of Attorney's Fees Procedure for Chapter 13 Cases in the United States Bankruptcy Court for the Western District of North Carolina*, U.S. Cts., https://www.ncwb.uscourts.gov/sites/ncwb/files/forms/Local%20Form%203%20Sept%202021.pdf [https://perma.cc/5KX7-JFYV] (last visited June 24, 2024) (establishing a $450 attorney fee for a motion to sell property). This amounts to an injury in fact.

Beyond the court's order affecting Trantham's procedural rights under the Code, Trantham suffered a "separate harm": the loss of ownership and control over her estate. *Cf., e.g.*, *Breland v. United States (In re Breland)*, 989 F.3d 919, 922 (11th Cir. 2021) (holding that a Chapter 11 debtor's loss of authority over his estate, which he suffered when the bankruptcy court removed him as the debtor-in-possession, constituted an injury in fact). And she suffered a "materially increased risk of another harm": increased procedural and economic burdens.

On this point, we find the Ninth Circuit's decision in *In re Sisk*, 962 F.3d 1133 (9th Cir. 2020), instructive. There, a group of Chapter 13 debtors altered the district's form

plan, which called for a fixed-duration plan, to propose estimated-duration plans.[2] *See id.* at 1138–40. The bankruptcy court denied confirmation, even though the plans weren't inconsistent with the Code, and required the debtors to conform their plans to the form plan. *Id.* at 1140.

The Ninth Circuit held that the debtors had standing to appeal the court's order. *Id.* at 1142–43. It reasoned that under their original plans, the debtors could have exited bankruptcy as soon as they paid off their debts, but under their amended ones, they needed to either continue in bankruptcy for a fixed duration or move to modify their plans. *Id.* at 1142. The debtors thus faced the risk of making more payments than they would have under their original plans, and of creditors' seeking plan modifications that increased the amounts owed. *Id.* These increased procedural burdens and risks of greater costs amounted to an injury in fact. *Id.*

So too here. Trantham's risk of increased burdens and her loss of control over her estate are sufficiently concrete for constitutional standing.

[2] A fixed-duration plan commits the debtor to make set payments for a certain number of months. *See Sisk*, 962 F.3d at 1138–39, 1142. The debtor is locked into the duration, even if she satisfies her priority and secured obligations and any required dividends to unsecured creditors before the duration lapses. *See id.* at 1142. And so long as the plan remains in effect, interested parties can seek to modify the debtor's plan to increase the amounts owed to unsecured creditors. *See id.* Consequently, the debtor could be required to make additional payments beyond those required by the original plan. *See id.* In contrast, an estimated-duration plan predicts the number of months that it will take for the debtor to complete the payments. *See id.* at 1138–39, 1142. The debtor can request discharge, though, as soon as she satisfies her priority and secured obligations and any required dividends to unsecured creditors. *See id.* at 1142.

And Trantham also satisfies the requirements for causation and redressability. She alleges that she was directly harmed by the bankruptcy court's ruling that she amend her plan to include Local Form 4's default vesting provision, and this court can redress this alleged harm, as reversing the court's order would allow Trantham's original plan to be confirmed. *Cf. id.* at 1143 n.4.

2.

Constitutional standing doesn't end the story, though. The Trustee argues that Trantham must also satisfy this court's prudential standing test. Looking again to *Sisk*, we disagree.

Prudential standing requires that the appellant is a "person aggrieved"—that is, "directly and adversely affected pecuniarily"—by the bankruptcy court's order. *U.S. Trustee for W.D. Va. v. Clark (In re Clark)*, 927 F.2d 793, 795 (4th Cir. 1991) (quoting *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442–43 (9th Cir. 1983)). The appellant meets this requirement when the bankruptcy court's order "diminishes their property, increases their burdens, or impairs their rights." *Bestwall*, 71 F.4th at 177–78 (quoting *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 371 (3d Cir. 2022)).

Trantham contends that the Supreme Court rejected the concept of prudential standing in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). But even if that standard applies, Trantham argues that she satisfies it for the same reasons that she satisfies constitutional standing.

In *Lexmark*, the Court held that lower courts shouldn't limit their jurisdiction for prudential reasons and affirmed their "virtually unflagging" duty to exercise the

jurisdiction that Congress granted them. 572 U.S. at 126–27 (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)). Still, several of our sister circuits have held that the person-aggrieved test survived *Lexmark*. *See Highland Cap. Mgmt. v. Pachulski Stang Ziehl & Jones, L.L.P.*, 74 F.4th 361, 368–69 (5th Cir. 2023); *cf. Atkinson v. Ernie Haire Ford, Inc. (In re Ernie Hair Ford, Inc.)*, 764 F.3d 1321, 1325 n.3 (11th Cir. 2014) (reclassifying the person-aggrieved test as a permissible zone-of-interest test, which asks who can sue under the substantive statute, post-*Lexmark*); *U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC (In re Petrone)*, 754 F. App'x 590, 591 (9th Cir. 2019) (same). *But cf. Litton Loan Servicing, L.P. v. Schubert (In re Schubert)*, No. 21-3969, 2023 WL 2663257, at *2–3 (6th Cir. Mar. 28, 2023) (predicting, without deciding, that *Lexmark* "likely dooms the person-aggrieved test as a jurisdictional bar," although the test may survive as a zone-of-interest test).

It's an "open question" in this court. *Kiviti v. Bhatt*, 80 F.4th 520, 534 n.11 (4th Cir. 2023). *But see Bestwall*, 71 F.4th at 177–78 (applying the person-aggrieved test without considering *Lexmark*'s effect). But it's one we can leave for another day.

Again, the Ninth Circuit's decision in *Sisk* guides our analysis. There, the court recognized that the purpose of the prudential standing test was to "limit[] the appeals of remote non-parties." 962 F.3d at 1143. But that purpose, the court found, "is not implicated when the appellant is the party below and remains integrally connected to the issues on appeal." *Id.* Since the debtors were "the only parties below" and "brought the filings—their own Chapter 13 plans—at issue [on] appeal," the court held that they didn't need to establish prudential standing. *Id.*

We agree with the Ninth Circuit's carve out. And because Trantham, like the debtors in *Sisk*, proposed the plan at issue and was a party below, we too hold that she doesn't need to satisfy the person-aggrieved test.

In any event, Trantham *is* a person aggrieved. The bankruptcy court's order resulted in Trantham's loss of control over her estate and risk of increased burdens, in addition to contravening her rights under the Code. *See supra* Part III.A.1; *Bestwall*, 71 F.4th at 177–78; *see also, e.g.*, *Westwood Cmty. Two Ass'n v. Barbee (In re Westwood Cmty. Two Ass'n)*, 293 F.3d 1332, 1335 (11th Cir. 2002) (explaining that a person aggrieved is someone who has a "financial stake" in the order being appealed).

B.

We turn now to the merits. Trantham argues that the bankruptcy court violated the Code and Federal Rules by holding that Local Form 4's vesting provision is mandatory. Although we find that the bankruptcy court's use of a default vesting provision is permissible, we agree with Trantham that requiring that default provision in her case was not.

1.

We first consider whether the bankruptcy court's use of a default vesting provision is per se invalid.

Congress delegated to the Supreme Court the power to make rules of practice and procedure that govern bankruptcy proceedings. 28 U.S.C. § 2075. Such rules, though, can't "abridge, enlarge, or modify any substantive right." *Id.*

The Court issued the Federal Rules of Bankruptcy Procedure, and there permitted district courts to enable bankruptcy judges to make local rules to govern proceedings within their jurisdictions. Fed. R. Bankr. P. 9029(a)(1). Local rules must adhere to certain rulemaking procedures and be "consistent with—but not duplicative of—Acts of Congress and [the Federal Rules]." *Id.* Generally, local rules also can't "prohibit or limit the use of the Official Forms." *Id.* But Chapter 13 cases are the exception.

Form plans in Chapter 13 cases exist to promote efficiency and aid creditors and courts in assessing and enforcing plans. *Cf.* Comm. on Rules of Prac. & Proc., Report of the Judicial Conference 4–5 (2017). To further this intent, local rules can require that debtors use a local form for Chapter 13 plans in lieu of the one required by the Official Forms. Fed. R. Bankr. P. 3015.1. The local form, though, must satisfy the conditions prescribed by the Federal Rules. *Id.* As relevant here, this includes allowing a debtor to propose nonstandard provisions. Fed. R. Bankr. P. 3015.1(e)(1). And any rules included in the local form must be procedural. *See, e.g.*, *Diaz v. Viegelahn (In re Diaz)*, 972 F.3d 713, 719 (5th Cir. 2020). In other words, the form plan can dictate *how* a debtor proposes her plan, but not *what* she proposes in it.

The Code doesn't require that the debtor include a vesting provision in her plan. *Compare* 11 U.S.C. § 1322(a) (establishing what the plan "shall" provide), *with id.* § 1322(b) (establishing what the plan "may" provide). But if she includes one, then vesting can occur "on confirmation of the plan or at a later time, in the debtor or in any other entity." *Id.* § 1322(b)(9).

Local Form 4's default provision calls for vesting at final decree, which is "at a later time" than plan confirmation. The Form also allows the debtor to propose a nonstandard provision that "deviat[es]" from the default one. J.A. 61; *see In re Shay*, 553 B.R. 412, 415–16 (Bankr. W.D. Wash. 2016) (holding that a local form's vesting provision was permissible because the debtor could propose a different one in the form's nonstandard provision section).

But as we explain, by making the Form's default vesting provision mandatory, the bankruptcy court abridged Trantham's right to propose a plan with her preferred vesting provision.

2.

We start from the premise that it's the debtor's "exclusive right to propose plans." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 505 (2015). While the Code makes a handful of provisions mandatory, most are elective. 11 U.S.C. § 1322(a)–(b). And the Code permits the debtor to "include any other appropriate provision not inconsistent with [the Code]." *Id.* § 1322(b)(11). Taken together, the Code grants the debtor considerable flexibility to design a plan based on her circumstances and preferences. *See Sisk*, 962 F.3d at 1145.

As we've stated, this flexibility includes the debtor's ability to include a vesting provision in her plan that vests property of the estate "on confirmation of the plan or at a later time, in the debtor or in any other entity." § 1322(b)(9).

Outside of § 1322(b)(9), nothing in the Code expressly limits the debtor's ability to propose a tailored vesting provision in her plan. And so long as her chosen provision is consistent with the Code and isn't otherwise proposed in bad faith or forbidden by law, the

bankruptcy court "shall confirm" the plan with that tailored provision. *See* 11 U.S.C. § 1325(a); *cf. Dep't of Soc. Servs. v. Webb*, 908 F.3d 941, 946 (4th Cir. 2018) (stating that "shall" under another Chapter 13 provision is a "clear statutory direction" that must be followed, absent explicit language granting an exception). Indeed, even if a creditor objected to the plan because of the vesting provision, the bankruptcy court may confirm the plan if either (1) the amount to be paid to the creditor's claim under the plan is equal to or greater than the claim amount, or (2) the plan applies all the debtor's disposable income to plan payments during the plan. *Id.* § 1325(b)(1).

Trantham proposed a plan that provided for vesting at confirmation. The bankruptcy court found that this provision was expressly permitted by § 1322(b)(9), and the court didn't find that it was made in bad faith or was unlawful. Trantham's plan also applied all her disposable income to plan payments for the plan's duration. Yet the bankruptcy court denied confirmation because Trantham's proposed vesting provision was contrary to Local Form 4.

This was error. In so doing, the court stripped Trantham of her right to propose a plan of her choosing with a tailored vesting provision and to have her plan confirmed.

The same is true of the bankruptcy court's decision to reject Trantham's proposed vesting provision because she didn't explain why she diverged from Local Form 4.

The Code doesn't require that the debtor justify her plan's permissive provisions when she files. *See id.* § 1322(b). And the Code's other provisions and the Federal Rules suggest that the debtor must do so only when a party in interest objects, *see id.* §§ 1305(b), 1307(c), 1325(b)(1) (placing the burden on the trustee and creditors to review

the plan and lodge objections); *First Union Com. Corp. v. Nelson, Mullins, Riley & Scarborough (In re Varat Enters., Inc.)*, 81 F.3d 1310, 1318 (4th Cir. 1996) (same), or the court so requires so that it can assess whether the plan has been proposed in good faith, *cf.* Fed. R. Bankr. P. 3015(f) (providing that the bankruptcy court "may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues"); *Deans v. O'Donnell*, 692 F.2d 968, 968 & n.1 (4th Cir. 1982).

Critically, only a substantive objection to the proposed plan can trigger the debtor's need to defend her choice. The objecting party must contend that the plan provision doesn't comply with the requirements of confirmation under 11 U.S.C. § 1325(a). *Cf. Andrews v. Loheit (In re Andrews)*, 49 F.3d 1404, 1408 (9th Cir. 1995) ("[I]n reviewing the plan for confirmation, the Chapter 13 trustee may object if the plan fails to conform to all requirements in the Bankruptcy Code . . . .").

In short, the debtor is the principal architect of her plan. *Cf. Bullard*, 575 U.S. at 505. "[O]ther than the right to object on certain specified bases in the Bankruptcy Code, a Chapter 13 plan is a rather one-sided affair." *In re Turner*, 558 B.R. 269, 280 (Bankr. N.D. Ill. 2016)). If the trustee objects, it is she who bears the initial burden of "going forward with evidence as to [her] objection." *E.g.*, *In re Moore*, 635 B.R. 451, 453 (Bankr. D.S.C. 2021); *accord Shortridge v. Ruskin (In re Shortridge)*, 65 F.3d 169 (6th Cir. 1995) (per curiam) (unpublished table decision) (explaining that "a party objecting to confirmation bears the burden of proof" and "vague and unsupported allegations cannot impede confirmation of the plan").

The Trustee's objection here wasn't substantive. The Trustee contended that Trantham's proposed vesting provision was contrary to the bankruptcy court's longstanding practice of requiring a different provision—not that it violated the requirements of confirmation. So requiring that Trantham justify her proposed vesting provision in response to this objection contravened her substantive rights under the Code.

The bankruptcy court determined that Trantham's attempt to diverge from the Form's vesting provision "without explanation [was] inappropriate." J.A 72. The district court, though, held that *any* divergence from the default provision "is inappropriate" and "cannot be confirmed." *Trantham*, 647 B.R. at 145. The district court explained that the Code and policy considerations "all support the conclusion that property should not be vested back to the debtor at confirmation, but rather, at a later time." *Id.* at 144–47.

Of course, our review on appeal is of the bankruptcy court's decision—not the district court's. *See, e.g.*, *Cypher Chiropractic Ctr. v. Runski (In re Runski)*, 102 F.3d 744, 745 (4th Cir. 1996). Still, we reject the district court's analysis.

For one, the Code's default vesting provision calls for vesting at confirmation. 11 U.S.C. § 1327(b). So Congress itself disagrees with the district court's contention that vesting at confirmation is contrary to Chapter 13's purpose and inconducive to its implementation. In any event, general policy considerations can't trump the debtor's substantive rights under the Code. *See, e.g.*, *Diaz*, 972 F.3d at 719. Rather, such concerns must be assessed case-by-case. *Cf. Steinacher v. Rojas (In re Steinacher)*, 283 B.R. 768, 774 (B.A.P. 9th Cir. 2002) ("While [a certain local rule] reflects an understandable attempt to redress abuses caused by repetitive filings, such abuses should be addressed by case-by-

case dismissals for cause under [§] 1307(c) . . . or by case-by-case denial of confirmation under [§] 1325(a)(3) . . . .").

3.

A sister circuit holds otherwise, but we're not persuaded.

Beginning in *In re Steenes*, the Seventh Circuit examined whether the bankruptcy court's use of a form confirmation order for Chapter 13 cases that retained property in the estate for the plan's duration violated the Code. 918 F.3d 554, 556 (7th Cir. 2019). Over a creditor's objections, the bankruptcy court imposed the form order's vesting provision on the ground that it was the court's routine practice. *Id.* at 557. The Seventh Circuit, though, held that such an approach conflicts with 11 U.S.C. § 1327(b), which provides that "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." *Steenes*, 918 F.3d at 557–58.

The court explained that § 1327(b) establishes "the norm" that property vests in the debtor at confirmation. *Id.* at 557. And while § 1327(b) grants bankruptcy courts the discretion to depart from this norm, the court continued, "the exercise of this discretion—like the exercise of all judicial discretion—requires good reason." *Id.* So because the bankruptcy court hadn't entered a "case-specific order, supported by good case-specific reasons" for inverting the statutory norm, the Seventh Circuit concluded that its application of the form order violated the Code. *Id.*

The bankruptcy court soon after eliminated the inverted-norm provision from its form order. *In re Cherry*, 963 F.3d 717, 718 (7th Cir. 2020). But on its form plan, it added

that same provision as a checkbox option that debtors could elect to include. *Id.* Relying on *Steenes*, creditors objected to plans with that box checked. *Id.* But the bankruptcy court determined that *Steenes*'s holding applied only to the judiciary, and that debtors, in contrast, "need not explain" their choice of vesting provision. *Id.*

The Seventh Circuit in *Cherry* disagreed. *Id.* at 719–20. It explained that § 1327(b) "treats 'a provision in the plan' and 'the order confirming the plan' identically." *Id.* at 719. And therefore, "[w]hether the debtor (by checking a box) or the judge (through a form order) proposes the departure from the statutory norm does not affect the need for justification." *Id.*

We can't agree. Section 1327(b), when read in isolation, may not distinguish between vesting provisions proposed by the debtor versus the court. But we don't interpret statutory text in a vacuum. And Chapter 13, when read in its entirety, affords priority to the debtor's proposed provisions.

We emphasize that it's the debtor's right alone to file for bankruptcy and propose a plan. *See* 11 U.S.C. §§ 1321–1322. And the grounds on which the bankruptcy court can reject her plan are limited. *See id.* § 1325; *LVNV Funding, LLC v. Harling*, 852 F.3d 367, 371 (4th Cir. 2017) ("By creating a finite list of affirmative requirements for a plan's confirmation, we assume that Congress intended to exclude other requisites from being grafted onto [§] 1325(a)." (cleaned up) (quoting *Petro v. Mishler*, 276 F.3d 375, 378 (7th Cir. 2002))). To remain consistent with the Code, we must read § 1327(b) as preserving the debtor's right to propose her own vesting provision, without having to justify it.

That said, when the debtor foregoes that right, § 1327(b) doesn't grant the bankruptcy court license to do so for her. Again, it's the debtor's exclusive right to propose a plan, and the Code doesn't permit the court to fill in the gaps at will. Indeed, even when the bankruptcy court sustains an objection to a plan, it can't amend the plan itself. Instead—and as happened here—the debtor must do so.[3]

We hold that the bankruptcy court can't reject a plan's vesting provision other than for the reasons allowed by the Code. And the Code doesn't permit the bankruptcy court to reject a plan's vesting provision just because the court's practice is to require a different provision. Rather, § 1327(b) requires a "case-specific order, supported by good case-specific reasons." *Steenes*, 918 F.3d at 558.[4]

IV.

Form plans for Chapter 13 cases no doubt increase efficiency and facilitate enforcement. Even so, such plans can't "abridge, modify, or enlarge" the debtor's substantive rights under the Code. 28 U.S.C. § 2075. Because the bankruptcy court's application of its Local Form 4 did so here, we must reverse. On remand, the bankruptcy

[3] The trustee and creditors can seek to modify a plan when the debtor's income unexpectedly increases after selling property that vested in him at confirmation. *See Murphy*, 474 F.3d at 154. In such a case, a court's order granting a motion to modify a plan would, practically speaking, alter the vesting provision prescribed in the original plan, as the increased income would no longer be vested in the debtor "free and clear," but allocated to creditors through bankruptcy. Section § 1327(b) anticipates such a situation.

[4] We don't mean to suggest that bankruptcy courts—and interested parties—have no substantial role to play in reviewing a debtor's proposed plan. While that role may be circumscribed in the manner we've described, it remains meaningful nonetheless.

court can assess whether Trantham's proposed vesting provision should be confirmed, or whether the court should reject it for a reason permitted by the Code.

REVERSED AND REMANDED

WILKINSON, Circuit Judge, concurring:

I concur in the remand of this case for further proceedings. I agree with the majority that courts may only reject a debtor's preference for nonstandard plan provisions for "reasons allowed by the Code." Maj. Op. at 21; *see* 11 U.S.C. § 1325. But that truism does not transform bankruptcy courts into rubber stamps for whatever plan a Chapter 13 debtor may propose. The absolutist positions taken by the district court and the debtor here both neglect an essential ingredient in the bankruptcy process: "[N]egotiation and collaboration among numerous parties." *In re Ottawa Bus Serv., Inc*., 498 B.R. 281, 288 (D. Kan. 2013). The principle of collaboration was lacking in this case.

Both Trantham and the district court present control over Chapter 13 plan provisions in contradictory terms. The debtor suggests that the broad choice of plan provisions allowed her under § 1322(b) is subject only to the narrowest scope of review under § 1325(a). *See* Appellant's Opening Br. 10–11. The district court, by contrast, views its reviewing authority in spacious and indeed unimpeachable terms. *See Trantham v. Tate*, 647 B.R. 139, 148 (W.D.N.C. 2022). The truth, as it so often does, lies somewhere in the middle. *See In re Am.-CV Station Grp., Inc.*, 657 B.R. 904, 907 (Bankr. S.D. Fla. 2024) ("Chapter 11 of the Bankruptcy Code is most successful when parties, even those who identify as adversaries, work collaboratively, or at least cooperatively, towards an outcome.").

The specific provision at the heart of this case involved the time of vesting. In Trantham's world, courts play only the most minimal role in reviewing debtors' plan provisions, absent the most explicit congressional mandate for intervention. *See*

Appellant's Opening Br. 11. This, to my mind, carries matters too far. It leaves little or no meaningful role for bankruptcy courts, trustees, and creditors to play. They might as well not even be there.

Where Congress has drafted broad criteria for bankruptcy plans, courts must have some discretion in assessing whether those requirements are met. To take but one example, bankruptcy courts may determine what constitutes a "good faith" proposal under § 1325(a)(3). *See* Maj. Op. at 15–17; *see also In re Tumbleson*, 28 B.R. 663, 664 (D. Colo. 1983). This inescapably will require the exercise of good judgment. *See In re Lavilla*, 425 B.R. 572, 576 (Bankr. E.D. Cal. 2010) (citing 11 U.S.C. § 1325(a)(3); Fed. R. Bankr. P. 3015(f)) ("The Bankruptcy Code does not define 'good faith.' The court must consider the totality of the circumstances when making the 'good faith' determination."). And given that concepts such as "good faith" have long histories in equity, this exercise of judgment is also in keeping with bankruptcy courts' role as "courts of equity." *Young v. United States*, 535 U.S. 43, 50 (2002). And it should come as no surprise that the Bankruptcy Code does not allow the person who took on debts beyond her means to unilaterally dictate every detail of how those debts will be repaid. *See In re McClaflin*, 13 B.R. 530, 534 (Bankr. N.D. Ill. 1981) (rejecting that "Congress intended a Voluntary Petition in Chapter 13 to be a carte blanche document permitting a debtor to deal with his creditors in any manner he sees fit").

But just as Trantham's position swings too far in one direction, the district court's swung too far in the other. The district court took the view that bankruptcy courts not only retain discretion to review Chapter 13 plans, but can reject any plan that alters the local-

form plan simply because it includes "a contradicting nonstandard provision." *Trantham*, 647 B.R. at 145. That view is incorrect. If the debtor assigns too limited a role to the other players in the bankruptcy process, the district court assigned to itself a plenary and arbitrary one. The Bankruptcy Code provides that debtors possess "the valuable exclusive right to propose plans, which [they] can modify freely." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 505 (2015) (citing 11 U.S.C. §§ 1321, 1323). This right would not be "valuable," but illusory if the debtor's preferences were deemed irrelevant. As the majority points out, courts may not wield "general policy considerations" to trump a debtor's proposed terms. Maj. Op. at 18. But the court appropriately leaves the door open to rejecting for good reason proposed plan provisions on "case-by-case" grounds. *Id.*

We should not make ourselves a party to rigidity. Intractability is a vice in bankruptcy proceedings, and collaboration a virtue. The Supreme Court has rightly encouraged debtors "to work with creditors and [] trustee[s] to develop a confirmable plan as promptly as possible." *Bullard*, 575 U.S. at 505. Courts should likewise embrace this spirit of collaboration when overseeing the creation and approval of Chapter 13 plans.

The word of Congress on this matter is definitive. Of that there is no doubt. But Congress flies at a height of 30,000 feet up. There remains a role for soldiers on the ground. There must be some medium of transmission from air to earth. As, for example, the role envisioned for district courts in ruling on summary judgment and other FRCP motions in the typical civil suit. The medium of transmission in bankruptcy is one of negotiation and collaboration between the various parties which collectively give meaning to the

congressional decree. Those values represent a balance between the various interests at play in the bankruptcy process which the participants would be well-advised to respect.

This section of materials was prepared by Dan Riggs, senior attorney to Rick Yarnall a Chapter 13 Trustee. These materials do not necessarily represent the official positions of the trustee.

Post Filing Considerations

I. Chapter 13 Trustee Fees in light of *In re Evans*

Title 28 of the United States Code states that Chapter 13 Trustees "shall collect" a percentage fee from all payments received "under plans".[1] The percentage fee is set by the United States Trustee and cannot exceed 10%.[2] From these percentage fees, a trustee pays for all expenses of the trusteeship including the trustee's salary.[3]

1326(a)(1) requires that a debtor start making payments under a proposed plan within 30 days of the commencement of the bankruptcy case.[4] Trustees are to retain these payments until confirmation or denial of confirmation.[5] *"If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan."*[6] *However, if a plan is not confirmed the trustee shall return any such payments not previously paid and not yet due and owing to creditors … to the debtor, after deducting any unpaid claim allowed under section 503(b)."*[7]

1326(b)(2) goes onto require that the trustee be paid their percentage fee "before or at the time of each payment to creditors."

Courts have wrestled with putting these sections together. Does "under plans" mean any proposed plan or just confirmed plans? Does 1326(a)(2) require the trustee to remit trustee fees when a case is dismissed prior to confirmation or do those fees fit within the "not previously paid" caveat? Finally, does the bankruptcy code allow a trustee disburse to a creditor without collecting a commission?

The vast majority of Bankruptcy Courts agreed that the trustee's percentage fee is collected on all payments received under a plan; whether that plan is proposed or confirmed. Recent circuit law has called this practice into question. To date, three circuits have held that trustee fees must be returned to the debtor when a case is dismissed prior to confirmation.

- *In re Doll*, 57 F.4th 1129 (10th Cir. 2023).
- *In re Evans*, 69 F4th 1101 (9th Cir. 2023). [8]
- *Marshall v. Johnson*, No. 23-22122, 2024 U.S. App. LEXIS 10852 (7th Cir. May 3, 2024).

[1] 28 U.S.C. § 586(e)(2).
[2] 28 U.S.C. § 586(e)(1).
[3] 28 U.S.C. § 586(e)(2)(A)-(B).
[4] 11 U.S.C. § 1326(a)(1)
[5] 11 U.S.C. § 1326(a)(2)
[6] *Id.*
[7] *Id.*
[8] *Copy of this opinion has been included as an exhibit*

The 2nd circuit has this issue under submission in, *In re Soussis*, No 22-155; oral argument was 2/15/2023. Question will be whether the 2nd Circuit creates a split which could send this issue to the Supreme Court.

This panel will attempt to address the fallout of these recent decisions by: looking at the effect on trustee's revenue; the amount of work a trusteeship does prior to confirmation; the effect on the confirmation process; whether pre-confirmation disbursements, such as adequate protection payments and payment of 503(b) fees, are even possible; and any work arounds that may exist. Exhibits include potential plan language that may allow a plan to be confirmed prior to having all issues resolved in a particular case.

II. Separately Classifying Student Loans in Chapter 13

Starting July 1, 2024, Chapter 13 debtors enrolled in Federal Student Loan income driven repayment ("IDR") plans will no longer need to separately classify their student loans to get IDR credit. Under the new rules, a borrower will receive forgiveness credit, in an IDR plan, when "the borrower made the required payments on a confirmed bankruptcy plan."[9] This will result in borrowers receiving IDR credit even when no payments are made to the Department of Education under the plan.

The questions this panel will attempt to answer are: should this rule change effect the treatment of student loan in chapter 13 plans and does it even make sense to attempt to prefer a student loan creditor over other general unsecured creditors?

What is unfair discrimination?

Throughout the country courts have wrestled with the question of whether it is appropriate to separately classify student loans in chapter 13. This tension is caused because the Bankruptcy Code allows a debtor to separately classify similarly situated creditors as long as the discrimination is not unfair.[10] To answer the question of what qualifies as unfair discrimination, most courts have adopted a variation of the four-part test that was originally set forth in *In re Kovitch*[11]. These cases require courts to look at:

1. Whether the discrimination has a reasonable basis;
2. Whether the debtor can carry out a plan without discrimination;
3. Whether the discrimination is proposed in good faith; and
4. Whether the degree of discrimination is directly related to the basis or rationale for the discrimination.

[9] 34 C.F.R. §685.209(k)(4)(iv)(K)
[10] 11 U.S.C. 1322(b)(1).
[11] *In re Kovitch*, 4 B.R. 407 (Bankr. W.D. Mich. 1980). See also: *Mickelson v. Leser (In re Leser),* 939 F.2d 669 (8th Cir. 1991), *In re Wolff,* 22 B.R. 510 (B.A.P. 9th Cir. 1982).

Some courts have added a fifth factor, that requires an analysis of the difference between what the discriminated creditor would receive under the proposed plan and the amount it would receive if there was no discrimination.[12]

The Seventh Circuit however rejected all of these opinions concluding that the four and five factor tests were "empty" and instructed courts to exercise reasonable discretion with respect to classification of claims in a chapter 13 case.[13]

Unfair Discrimination and Student Loans

Not surprisingly, courts have been all over the board in determining whether separate treatment of a student loan creditor is fair. One court held that held that there was unfair discrimination when the plan proposed to pay unsecured creditors 10% and student loans would be paid in full.[14] Another court held that paying 78% of student loan debt and only 1% of unsecured debt was fair.[15] Some courts have determined that allowing a debtor to continue in an IDR program or Loan Forgiveness Program did not constitute unfair discrimination.[16] However, those opinion generally rely on the fact that IDR payments are small and the discrimination is minor. Only time will tell if the IDR Rule change will alter the court's analysis. The exhibits include language that has previously been used in the District of Nevada to allow separate classification of IDR payments during the pendency of a chapter 13 plan.

III. **Attorney Fees**

Attorneys, like all professionals, deserve to be paid for the professional services that they render. However, in bankruptcy cases there is a long list of factors that a court must consider when approving attorney fees. This panel will attempt to cover the rules for getting paid in a chapter 13 case and how presumptive fees are attempting to streamline that process.

A court may award reasonable compensation to a debtor's attorney "for representing the interest of the debtor in connection with the bankruptcy case on a consideration of the benefit and necessity of such services to the debtor."[17] Courts are to "consider the nature, the extend and the value of such services" taking into account: the "time spent"; the "rates charged"; whether the "services were necessary … or beneficial"; where the "services were performed within a reasonable amount of time"; and "whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners."[18] Courts are also directed to disallow compensation for: "unnecessary duplication of services"; services that were not "reasonably likely to benefit the debtor's estate"; or services that were

[12] *In re Husted*, 142 B.R. 72, 74–75 (Bankr. W.D.N.Y. 1992).
[13] *In re Crawford*, 324 f.3d 539 at 544 (7th Cir. 2003). "We haven't been able to think of a good test ourselves. We conclude, at least provisionally, that this is one of those areas of the law in which it is not possible to do better than to instruct the first-line decision maker, the bankruptcy judge, to seek a result that is reasonable in light of the purposes of the relevant law, which in this case is Chapter 13 of the Bankruptcy Code; and to uphold his determination unless it is unreasonable (an abuse of discretion)."
[14] *McCullough v. Brown*, 162 BR 506 (Dist. C. ND. Ill 1993).
[15] *In re Brown*, 500 B.R. 255 (Bankr. S.D. Ga 2013).
[16] *Matter of Pracht*, 464 B.R. 486 (Bankr. M.D. Ga 2012).
[17] 11 U.S.C. § 330(a)(4)(B).
[18] 11 U.S.C. § 330(a)(3)(A)-(F).

not "necessary to the administration of the case."[19] Awarded attorney fees become allowed administrative expenses under Section 503(b) of the bankruptcy code.[20] This is important because 503(b) fees enjoy the benefit of being paid even when a case is dismissed prior to confirmation.[21] The United States Trustee, either personally or through its appointed chapter 13 trustee, has a duty to assist the courts by reviewing fee applications and objecting to such fees when appropriate.[22]

As the process for reviewing fee applications is onerous, many courts have adopted presumptive or no-look fees which allow a debtor's attorney a fixed amount for representing a debtor. In Nevada, that amount is $5,000. For $5,000 the debtor's attorney agrees to perform all the basic requirements needed to represent a debtor from filing the petition to the completion of the bankruptcy case. These requirements and any unbundled services are set forth in the Chapter 13 Presumptive Attorney's Fee Guidelines. These Guidelines are attached as an exhibit. In order to take the Presumptive Fee a debtor's attorney must file the local form "Notice of Election to Accept the Presumptive Fee".[23]

Across the country bankruptcy courts have set a wide range of presumptive fees for example:

- Arizona allows $4,500 for a non-business case and $5,500 for a business case[24];
- The Central District of California allows presumptive fees of $8,500 for a case in which the debtor is engaged in a business or $7,000 in all other cases;[25]
- The Eastern District of California allows a flat fee of $8,500 for a nonbusiness case and $12,500 for a business case.;[26] and
- Utah allows $3,500 for a under median debtor, $4,000 for an over median debtor, and $4,500 for an over-median-business case.[27]

Regardless of whether a practitioner accepts the presumptive fee amount, the presumptive fee amount should serve as a tether for all fees awarded in chapter 13 cases. This is because it sets the "customary compensation charged" by a practitioner in a given area. Courts should consider the presumptive fee amount when awarding fees to attorneys who choose to opt out of the district's presumptive fees.[28]

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[19] 11 U.S.C. § 330(a)(4)(A).
[20] 11 U.S.C. § 503(b)(2).
[21] 11 U.S.C. § 1326(a)(2).
[22] 28 U.S.C. § 586(a)(3)(A).
[23] NV Bankruptcy Local Rule 2016.2 and the Chapter 13 Presumptive Attorney Fees Guidelines – Effective 2/1/2021.
[24] Local Rule 2084-3. https://www.azb.uscourts.gov/rule-2084-3
[25] https://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBR%20Appendix%20IV.pdf
[26] Local Rule 2016-1(c)(1)(A). https://www.caeb.uscourts.gov/documents/Forms/LocalRules/Local%20Rules%20July%202024.pdf
[27] https://www.utb.uscourts.gov/content/judge-kevin-r-anderson. The presumptive fee amount can be found under "Chamber Procedures" for each individual bankruptcy judge.
[28] 11 U.S.C. 330(a)(3)(F)

Exhibits:

I. **Chapter 13 Trustee Fees in light of *In re Evans***

- *In re Evans*, 69 F4th 1101 (9th Cir. 2023).
- Potential additional plan language.

II. **Separately Classifying Student Loans in Chapter 13**

- Plan language to separately classify Student Loan IDR payments.

III. **Attorney Fees**

- District of Nevada's Chapter 13 Presumptive Fees Guidelines.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In the Matter of: ROGER A. EVANS; LORI A. STEEDMAN, *Debtors,* --- ROGER A. EVANS; LORI A. STEEDMAN, *Appellants,* v. KATHLEEN A. MCCALLISTER, Chapter 13 Trustee, *Appellee.*	No. 22-35216 D.C. No. 4:20-cv-00112-DCN OPINION

Appeal from the United States District Court
for the District of Idaho
David C. Nye, Chief District Judge, Presiding

Argued and Submitted February 7, 2023
Portland, Oregon

Filed June 12, 2023

Before: MILAN D. SMITH, JR., DANIELLE J. FORREST, and JENNIFER SUNG, Circuit Judges.

Opinion by Judge Milan D. Smith, Jr.

SUMMARY*

Bankruptcy

The panel reversed the district court's judgment reversing the bankruptcy court's order requiring a standing Chapter 13 trustee to return her percentage fee when the case was dismissed prior to confirmation.

Joining the Tenth Circuit, the panel held that the trustee was not entitled to a percentage fee of plan payments as compensation for her work in the Chapter 13 case. 28 U.S.C. § 586(e)(2) provides that the trustee shall "collect" the percentage fee from "payments . . . under plans" that she receives. 11 U.S.C. § 1326(a)(1) provides for the debtor to make payments in the amount "proposed by the plan to the trustee." Section 1326(a)(2) provides that the trustee shall retain these payments "until confirmation or denial of confirmation." This section further provides that if a plan is not confirmed, the trustee shall return to the debtor any payments not previously paid to creditors and not yet due and owing to them. Section 1326(b) provides that, before or at the time of each payment to creditors under the plan, the trustee shall be paid the percentage fee under § 586(e)(2).

The panel held that, reading these statutes together, "payments . . . under plans" in § 586 refers only to payments

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

under confirmed plans. Prior to confirmation a trustee does not "collect" or "collect and hold" fees under § 586, but instead "retains" payments "proposed by the plan" pursuant to § 1326(a)(2). If a plan is not confirmed, then § 1326(a)(2) requires return to the debtor of payments "proposed by the plan." If a plan is confirmed, then § 1326(b) provides for payment of the percentage fee to the trustee. Thus, under the plain meaning of the statutory text, a trustee is not paid her percentage fee if a plan is not confirmed. The panel concluded that statutory canons of construction, such as the rule against superfluities, and the provisions' amendment history confirmed its reading of the statutes. And policy arguments made by the trustee were not enough to overcome the plain language and context of the relevant statutory provisions.

COUNSEL

Alexandra O. Caval (argued), Caval Law Office P.C., Twin Falls, Idaho, for Appellants.

Mahesha Subbaraman (argued), Subbaraman PLLC, Minneapolis, Minnesota; Jeffrey P. Kaufman, Office of Kathleen McCallister, Meridian, Idaho; for Appellee.

Tara Twomey, National Consumer Bankruptcy Rights Center, San Jose, California; Matthew D. Resnik, RHM Law LLP, Encino, California; for Amici Curiae National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys.

Henry E. Hildebrand III, Office of the Chapter 13 Trustee, Nashville, Tennessee, for Amicus Curiae the National Association of Chapter Thirteen Trustees.

OPINION

M. SMITH, Circuit Judge:

In this case we decide whether a standing trustee in a Chapter 13 bankruptcy is paid her percentage fee when a case is dismissed prior to confirmation. For the reasons explained in this opinion, we join the Tenth Circuit in holding that she is not.

STATUTORY FRAMEWORK

Chapter 13 bankruptcies provide debtors receiving a regular income an opportunity to pay off their debts while retaining their property. *Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015). To commence this type of bankruptcy, a debtor must file a petition with the court and—either at that time, or fourteen days thereafter—a proposed plan that outlines how he will pay off debts using his future income. *Id*.; 11 U.S.C. §§ 1321–1322; Fed. R. Bankr. P. 3015. Within thirty days of filing the plan or petition (whichever is earlier), the debtor must begin making plan payments to a Chapter 13 trustee. 11 U.S.C. § 1326(a)(1).[1]

After the plan is filed, the bankruptcy court must assess whether the proposed plan meets statutory standards to be "confirm[ed]," which is bankruptcy parlance for "approved." *Id*. § 1325. If the court confirms the plan, the trustee begins disbursing payments to creditors under the

[1] 11 U.S.C. § 1326(a)(1) refers to payments that must be made "not later than 30 days after the date of the filing of the plan or the order for relief." The filing of a voluntary Chapter 13 petition constitutes an order of relief, under which debtors may temporarily pause payments to creditors while the petition is pending. 11 U.S.C. § 301(b).

terms of the plan. *Id*. § 1326(a). If the court denies confirmation, the debtor may revise his plan to meet the requisite standards. *See Bullard*, 575 U.S. at 498. Alternatively, the debtor may move to dismiss his Chapter 13 case. 11 U.S.C. § 1307(b).

In most federal judicial districts, there is a "standing trustee" who supervises all the Chapter 13 cases in the district and plays a critical role in shepherding petitions through the bankruptcy process. *See id*. § 1302(a); 28 U.S.C. §§ 581, 586(b). Among other things, the trustee collects the debtor's payments, ensures that payments are timely made to creditors, and objects (when necessary) to plan confirmation. *Id*. § 1302(b) (cross-referencing the duties of Chapter 7 trustees under section 704(a)). As compensation for their work, standing trustees receive a percentage fee of plan payments. 28 U.S.C. § 586(e)(2). At issue here is whether a standing trustee is to be paid her percentage fee when a debtor dismisses his bankruptcy case prior to confirmation. Relevant to that question are three interrelated statutory provisions: 28 U.S.C. § 586(e)(2); 11 U.S.C. § 1326(a)(1); and 11 U.S.C. § 1326(b).

First, Section 586 of 28 United States Code describes the duties of the standing trustee. Relevant here, Section 586(e)(2) discusses the percentage-fee system:

> [The trustee] shall collect such percentage fee from all payments received by such individual under plans in the cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 for which such individual serves as standing trustee.

Second, Section 1326 of 11 United States Code lays out the mechanics of Chapter 13 plan payments. Section 1326(a) explains that debtors must begin making payments before confirmation, and states the effect of plan confirmation or denial:

> (a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—
>
> > (A) proposed by the plan to the trustee; . . . .
>
> (2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor after deducting any unpaid claim allowed under section 503(b).[2]

[2] The Chapter 13 trustee's fee is not an administrative expense under Section 503(b), and the trustee has not argued that it is. *See In re Rivera*, 268 B.R. 292, 294 (Bankr. D.N.M.), *aff'd sub nom*, *Skehen v. Miranda (In re Miranda)*, 285 B.R. 344 (B.A.P. 10th Cir. 2001) (unpublished).

Finally, Section 1326(b) of 11 United States Code follows subsection (a) and cross-references Section 586 of 28 United States Code. It provides:

> (b) Before or at the time of each payment to creditors under the plan, there shall be paid[]. . . (2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28.

FACTUAL BACKGROUND AND PRIOR PROCEEDINGS

In this case, Roger Evans and Lori Steedman (Debtors) filed a Chapter 13 bankruptcy plan. The plan provided that the fees of the standing trustee, Kathleen McCallister (Trustee), would be "governed and paid as provided by 28 U.S.C. § 586." Consistent with 11 U.S.C. § 1326(a)(1), Debtors began making payments to Trustee according to the proposed plan, and Trustee collected a percentage fee from each payment as compensation. Before the plan was confirmed, however, Debtors voluntarily dismissed their case.

After Debtors dismissed their case, they filed a "motion to disgorge fees," arguing that Trustee was obligated to return to them any fees she had collected because 11 U.S.C. § 1326(a) requires fees to be refunded if a plan is not confirmed. The bankruptcy court agreed with Debtors and ordered Trustee to return the fees. The district court reversed. Debtors timely appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 158(d)(1). We stand in the same position as did the district court in reviewing the bankruptcy court's order. *See In re Ctr. Wholesale, Inc*., 759 F.2d 1440, 1445 (9th Cir. 1985). We review the bankruptcy court's conclusions of law de novo. *In re Pizza of Haw., Inc*., 761 F.2d 1374, 1377 (9th Cir. 1985).

ANALYSIS

The question presented by this case is a matter of first impression in our circuit.[3] It requires us to interpret the previously described statutes using principles of statutory construction. "Statutory construction 'is a holistic endeavor,' and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter." *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc*., 508 U.S. 439, 455 (1993) (quoting *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988)).

I. Plain Text

We begin with the statutory text. *See United States v. Pacheco*, 977 F.3d 764, 767 (9th Cir. 2020). "The plain meaning of the text controls unless it is ambiguous or leads to an absurd result." *Id*.

[3] The only other circuit to address it is the Tenth Circuit. *See In re Doll,* 57 F.4th 1129 (10th Cir. 2023). An appeal presenting the same question is also pending before the Second Circuit. *See Soussis v. Macco*, No. 22-155 (2d Cir. argued Feb. 15, 2023).

A. Trustee and Debtors' Interpretations

The parties both argue that a proper interpretation of the word "collect" in 28 U.S.C. § 586(e)(2) controls this case.[4] The relevant language reads: "[The trustee] shall *collect* such percentage fee from all payments received by such individual under plans . . . for which such individual serves as standing trustee." 28 U.S.C. § 586(e)(2) (emphasis added).

According to Trustee, Section 586 directs her to collect—and *keep*—fees from payments made by debtors as she receives them, whether pre- or post- plan confirmation. For support, she argues that the word "collect" means "to receive payment." *Collect*, BLACK'S LAW DICTIONARY (5th ed. 1979). Trustee also notes other laws where Congress qualified the word "collect" and argues that it purposely did not do so here. *See, e.g.*, 28 U.S.C. § 1914(b) ("The clerk shall collect . . . such additional fees *only as are prescribed* . . . ." (emphasis added)). In her view, the unqualified use of the word "collect" indicates congressional intent for trustees to *irrevocably* collect their fees when they receive each payment prior to confirmation.

Debtors argue that if "collect" is read the way Trustee suggests—i.e., "irrevocably collect"—a conflict results between 28 U.S.C. § 586 and 11 U.S.C. § 1326(a)'s directive to return payments to the debtor if a plan is not

[4] Both Debtors and Trustee make a number of other arguments which we do not find persuasive. For example, Trustee also relies on the "unqualified" nature of the words "under plans" in Section 586 to argue that she may extract her percentage fee not only from confirmed plan payments, but unconfirmed plan payments as well. But as discussed *infra*, such a microscopic approach to interpretation ignores the broader context of the statutory scheme.

confirmed. To avoid this conflict, Debtors urge us to adopt the bankruptcy court's interpretation. Under that reading, Section 586(e)(2) directs the trustee to "collect and hold" fees from preconfirmation payments pending confirmation, while Section 1326(a) tells the trustee how to disburse payments once a decision on confirmation is made. If a plan is confirmed, the payments (and fees) are distributed in accordance with the plan; if a plan is not confirmed, the payments (and fees) are returned to the debtors.

Trustee and Debtors' interpretations suffer from the same basic flaw: they both require us to add words to the statute that are not there.[5] Trustee wants us to read "collect" as "irrevocably collect." Debtors want us to read "collect" as "collect and hold." We decline the invitation to do either. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004) (declining to "read an absent word into the statute"); *Doll,* 57 F.4th at 1144 (noting that trustee's argument amounted to "reading the word 'irrevocable' into the statute as an adjective defining 'collect'" and refusing to do so). The word

[5] Moreover, the Debtors' reliance on Section 1326(a) as requiring return of payments (and fees) when a plan is "not confirmed" is difficult to square with the simple fact that the plan in this case was *not* "not confirmed," i.e., denied—it was voluntarily dismissed. *See Bullard*, 575 U.S. at 503 (distinguishing between legal effects of plan confirmation and denial and case dismissal). As Trustee notes, Section 1326(a) only applies to denial of plan confirmation. Section 1326(a)(2) begins by instructing the trustee to retain payments "until confirmation or denial of confirmation." The next two sentences start with the phrase "if a plan is confirmed," and "if a plan is not confirmed," suggesting that Congress equated a plan "not [being] confirmed" with "denial of confirmation." In this case, Debtors' plan had been neither confirmed nor denied when they voluntarily dismissed their case; therefore, even assuming that the word "payments" include the percentage fee, Section 1326(a)'s return mandate was not triggered.

"collect," in isolation, does not answer the question in this case.

B. NCBRC's Interpretation

The better approach, as proposed by amicus National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys (NCBRC), is to read 28 U.S.C. § 586 and 11 U.S.C. § 1326 together. *See In re W. States Wholesale Nat. Gas Antitrust Litig*., 715 F.3d 716, 731 (9th Cir. 2013) ("[S]tatutory provisions should not be read in isolation, and the meaning of a statutory provision must be consistent with the structure of the statute of which it is a part."), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc*., 575 U.S. 373 (2015). NCBRC contends that the phrase "payments . . . under plans" in Section 586, when read in the larger context of the Bankruptcy Code, refers only to payments under *confirmed* plans, rendering the provision irrelevant to the *pre-confirmation* period. NCBRC suggests that to the extent this case implicates pre-confirmation payments, the place to look is instead Sections 1326(a) and (b).

Unlike Section 586, which refers to "payments . . . under plans," Section 1326(a)(1)(A) refers to payments "*proposed by* the plan." And it instructs the debtor to commence making "payments . . . in the amount[] . . . proposed by the plan" no later than thirty days after the date of filing of the plan or the order for relief, whichever is earlier.

Accordingly, prior to confirmation, a trustee does not "collect" or "collect and hold" fees under Section 586, but instead "retains" payments "proposed by the plan" pursuant to Section 1326(a)(2). *See* § 1326(a)(2) ("[P]ayment[s] made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation.") If a plan is

not confirmed, Section 1326(a) requires return of "any such payments"—again referring to payments "proposed by the plan"—to the debtor, after deducting amounts previously paid and due and owing to creditors. *Id.* If a plan is confirmed, the trustee is to distribute payments in accordance with the plan. *Id.* §1326(a)(2).

Plan confirmation triggers one last and important provision, Section 1326(b). According to NCBRC, if a plan is confirmed—and *only* if a plan is confirmed—does 1326(b) require that the trustee "be paid" her percentage fee "[b]efore or at the time of each payment to creditors under the plan." Because payments are made "to creditors under the plan" only once a plan is confirmed, *id.* § 1326(a)(2), Section 1326(b) indicates that a standing trustee can be paid her percentage fee only after confirmation. Section 1326(b) also cross-references Section 586, which provides *the source of and the amount* (but not the timing) of trustee fees.

We generally agree with NCBRC's construction of the relevant statutes, which renders harmonious an otherwise fragmented scheme. *See United States v. Millis*, 621 F.3d 914, 917 (9th Cir. 2010) ("[W]ords must be read in their context, with a view to their place in the overall regulatory scheme, and to 'fit, if possible, all parts into an harmonious whole.'") (quoting *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 133 (2000)). The plain text of Section 1326(b) unambiguously shows that it is the specific provision governing when a trustee "shall be paid": "before or at the time of each payment to creditors under the plan," which necessarily means post-confirmation of a plan.[6]

[6] Trustee attempts to leverage the phrase "before or at the time of each payment to creditors under the plan," in 1326(b) by deleting the words "or at the time" and arguing that 1326(b) instructs that trustees should be

Section 1326(a) only governs disposition of "payments . . . proposed by the plan," and Section 586 only provides that when a trustee *does* collect her fee pursuant to 1326(b), she does so by "collect[ing]" her fee "from all payments received" under confirmed plans. *See* 28 US.C. § 586(e)(2)).

Moreover, NCBRC's interpretation is consistent with the opinion of the only other circuit to reach this issue. In *Doll*, the Tenth Circuit read Section 586 as "only address[ing] the *source* of funds that may be accessed to pay standing trustee fees," while reading Section 1326 as "address[ing] Chapter 13 payments and *what happens* to that money, including . . . what happens to such payments if a Chapter 13 plan is not confirmed." 57 F.4th at 1140 (emphasis added). Like our sister circuit, we conclude that a trustee is not paid her percentage fee if a plan is not confirmed.[7] *Id*. at 1141. In this case, because a plan was never confirmed, Trustee must return the fees she collected prior to dismissal.

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paid "before" confirmation. But "[a] court does not get to delete inconvenient language and insert convenient language to yield the court's preferred meaning." *Borden v. United States*, 141 S. Ct. 1817, 1829 (2021). Instead, reading all of the words in Section 1326(b) shows that the percentage fee "shall be paid" "before or at the time of each payment to creditors under the plan." Consequently, if a "payment[] to creditors under the plan" never occurs because a plan is never confirmed, it follows that a trustee does not get paid at all. *See, e.g., Doll*, 57 F.4th at 1145.

[7] Although *Doll* did not address the precise argument raised by NCBRC here—that payments "under plans" in Section 586 only refers to payments under confirmed plans, 57 F.4th at 1144 n.9—we agree with its ultimate conclusion that "[Section] 1326(a)(2) requires the trustee to return . . . *all* of the pre-confirmation payments he receives" if a plan is not confirmed, "without first deducting his fee." *Doll,* 57 F.4th at 1141 (emphasis in original).

II. Other Sources of Meaning

To the extent doubt remains about the meaning of Sections 586 and 1326, statutory canons of construction, such as the rule against superfluities, and the provisions' amendment history, confirm our reading.

"[T]he rule against superfluities instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous." *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Debtors argue that the difference between Section 1326(a) in Chapter 13 and analogous provisions that govern trustee payments in Chapter 12 and Chapter 11, Subchapter V bankruptcies reveals that Congress intended for trustees in Chapter 13 bankruptcies to return their fees in the event of dismissal.

Section 1226 of Chapter 12 establishes the relationship between a trustee fee and confirmation:

> (a) Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, **after deducting—**
>
> . . .
>
> **(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee.**

11 U.S.C. § 1226(a) (emphasis added). Section 1194(a) of Chapter 11, Subchapter V, also titled "Payments," provides as follows:

> (a) Retention and distribution by trustee.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor **after deducting—**
>
> . . .
>
> **(3) any fee owing to the trustee.**

11 U.S.C. § 1194(a) (emphasis added). Both provisions have language almost identical to Section 1326(a), but explicitly mandate that fees be paid to trustees regardless of plan confirmation. Debtors thus argue that reading Section 1326(a) to require fee deduction absent similar language would render those instructions in 1226(a) and 1194(a) surplusage.

The analogous provisions in Chapter 12 and Chapter 11, Subchapter V, are evidence in Debtors' favor. They show that Congress knew how to explicitly require payment of trustee fees in the event of non-confirmation—by requiring "deduct[ion]" of such fees—and suggest that it intentionally chose not to require the same in the Chapter 13 context. *Cf. Hamilton v. Lanning*, 560 U.S. 505, 514 (2010) ("[W]e need look no further than the Bankruptcy Code to see that when

Congress wishes to mandate simple multiplication, it does so unambiguously—most commonly by using the term 'multiplied.'").

The amendment history of these provisions also supports Debtors' and NCBRC's interpretation. Congress has amended various provisions governing Chapter 13 payments and trustee fees several times. For example, in 1994, Congress amended Section 1326(a)(2) to require payments to creditors to begin "as soon as [] practicable" after confirmation. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 307, 108 Stat. 4106. In 2005, Congress amended Section 1326(a)(2) once more by, *inter alia*, adding the words "not previously paid and not yet due and owing to creditors pursuant to paragraph (3)." Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §309, 119 Stat. 23.

Congress thus has had numerous opportunities to add language explicitly permitting a trustee to receive her fees even if a plan is not confirmed. Its failure to do so strongly evinces its intent not to require payment of trustee fees when a plan is not confirmed. *See Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1071–72 (2020); *Lindh v. Murphy*, 521 U.S. 320, 330 (1997) ("[N]egative implications raised by disparate provisions are strongest when the portions of a statute treated differently had already been joined together and were being considered simultaneously when the language raising the implication was inserted.").

III. Policy

Finally, the parties make several policy arguments. Trustee insists that this dispute risks ruining the "the financial survival of Chapter 13 trustees throughout the Ninth Circuit." According to her, permitting those debtors

who voluntarily dismiss their case prior to confirmation to avoid paying trustee fees "diminishes the total funds available to Chapter 13 trustees to help all debtors." Fee avoidance, Trustee argues, will unfairly shift fees onto the remaining Chapter 13 debtors as a result. Moreover, Trustee argues that holding in Debtors' favor would incentivize trustees to violate their duty to object to plans prior to confirmation, knowing that they only get paid if a plan is confirmed.

In response, Debtors argue that Trustee overstates the stakes of this case. They note that, in practice, standing trustees had not been paid until plan confirmation from 1998 to 2012. *See* DOJ., *Exec. Office for the U.S. Tr., Handbook for Chapter 13 Standing Trustees* 11-2 (1998) ("Percentage fees are to be paid to the standing trustee's expense account at the time of disbursements under the plan and not at the time of receipts of the payments by the standing trustee . . . ."). This policy was only changed recently, first in 2012 to permit fee collection prior to confirmation, and then in 2014 to permit collection of fees upon receipt of payment. *See* Martha Hallowell, *Successful Projects in 2014 Include Training, Percentage Fee Policy and Unsecured Claims Review*, Exec. Office for U.S. Trs., https://www.justice.gov/ust/file/nactt_201503.pdf/download. Notably, the current Chapter 13 Trustee Handbook contemplates the possibility of different practices based on different jurisdictions: "If the plan is dismissed or converted prior to confirmation, the standing trustee must reverse payment of the percentage fee that had been collected upon receipt if there is controlling law in the district requiring such

reversal . . . ." DOJ, *Exec. Office for the U.S. Tr., Handbook for Chapter 13 Standing Trustees* 2-4 (2012).[8]

There is no doubt that standing trustees perform important work in Chapter 13 bankruptcies. But "[i]t is hardly this [c]ourt's place to pick and choose among competing policy arguments . . . selecting whatever outcome seems to us most congenial, efficient, or fair. Our license to interpret statutes does not include the power to engage in . . . judicial policymaking." *United States v. Nishiie*, 996 F.3d 1013, 1028 (9th Cir. 2021) (citing *Pereida v. Wilkinson*, 141 S. Ct. 754, 766–67 (2021)), *cert. denied*, 142 S. Ct. 2653 (2022). Trustee's policy arguments are not enough to overcome the plain language and context of the relevant statutory provisions, which indicate that standing trustees are only to be paid once a plan is confirmed.

CONCLUSION

For the foregoing reasons, the district court's judgment is **REVERSED.**

[8] No one argues that the interpretation in the Trustee Handbook should be given deference under *Chevron, U.S.A., Inc. v. NRDC, Inc*., 467 U.S. 837 (1984), or *Skidmore v. Swift & Co*., 323 U.S. 134 (1944)).

TEMPLATE LANGUAGE

VALUE COLLATERAL: The value of the collateral as listed in section 4.3 shall be determined through a separate motion and order and not the confirmation of this plan. Should the Order to value collateral be granted in an amount greater than the amount listed in the plan or otherwise render the plan infeasible, Debtor shall, within 45 days from the entry of the Order to value collateral, modify the plan to provide for the value of the collateral as listed in the Order. Should the Debtor fail to obtain an Order to value collateral within 90 days of Confirmation, Debtor shall amend the plan to provide for the full value of the claim.

OBJECTION TO CLAIM: Debtor will be filing an Objection to Claim filed by _____, claim #___ or otherwise resolve the Claim. Should the Objection to claim be denied, or otherwise render the plan infeasible, Debtor shall, within 45 days from the entry of the Order, modify the plan to provide for the claim. Should the Debtor fail to obtain an Order objecting to the claim filed by _____, claim #___, within 90 days of Confirmation, Debtor shall amend the plan to provide for the claim.

AVOID LIEN: Debtor has filed a Motion to Avoid Lien of _____, currently scheduled for _____. Should the Motion to Avoid Lien be denied, Debtor shall, within 45 days from the Entry of the Order on Motion to Avoid Lien, modify the plan to provide for _____ proof of claim #___.

TAX RETURN TURNOVER: Debtor(s) will provide Trustee a copy of Debtor(s) (and non-filing spouse, if applicable) _____ tax return no later than 10/31/20____ as well as turnover any refund(s) required by this Plan.

MMP language:

Sec. 9.2 cont'd : The debtor has entered into the MMP in an effort to modify the mortgage of Secured Creditor, _____. Upon conclusion of the MMP, if a modification is agreed to, the process shall proceed pursuant to the MMP Procedures. Should a mortgage modification be denied or a modification otherwise not secured, the debtor shall, within 30 days of such event: (1) modify the confirmed plan to provide for the cure and maintenance of the mortgage creditor, or (2) proceed with the sale or refinance of the property, or (3) seek such other relief available to the debtor.

IRS: The IRS Proof of Claim includes an estimated amount for the 20__ tax year based on unfiled return(s). The debtor has filed the 20__ return and anticipates the IRS will amend its Proof of Claim to reduce the liability after the tax return is processed. The priority IRS claim amount listed in Section ____ (4.4 or 5.1) is an estimation of the actual amount due to the IRS. If the amended claim amount is greater than the estimated amount in the plan and such claim renders the plan infeasible, the debtor shall, within 45 days of the amended Proof of Claim being filed, modify the plan to provide for the full claim or file an objection to the Proof of Claim. If no amended Proof of Claim is filed within 6 months after the date of confirmation of this plan, the trustee may commence payment on the IRS claim as filed.

Documents: By _____, Debtor(s) must provide to the Trustee the following documents:

Student Loan Language

Part 9.2 Nonstandard Plan Provisions

9.2.1 - **Debtor Elects to Cure and Maintain the Following Student Loans Creditors -** Debtor will, through the Chapter 13 Plan, maintain the contractual installment payments and cure any default in payments on the income-driven repayment ("IDR") plans or student loan claims listed below. The special provisions contained in this section only apply to the Federal Student Loans expressly listed below. Hereinafter United States Department of Education and any other holder of student loans pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070, et seq. shall be referred to as "Title IV Loan Holder."

a. Identification of Loans To Be Specially Classified And Paid Monthly By Trustee

The loans listed immediately below will be paid in the manner detailed in subsection (d) below.

Title IV Loan Holder (original lender and current servicer, if any. Add additional lines as necessary.)	Date Loan Obtained	Type of Loan (ex: Direct, FFEL, Subsidized/ Unsubsidized)	Original Loan Amount
1.			
2.			
3.			

b. Eligibility - Debtor is not in default, or the debtor will cure any default through the Chapter 13 Plan, on the Federal student loan debts listed above. This plan cannot and does not discharge all or any part of the debtor's student loans. Debtor may voluntarily exit the student loan repayment plan through a plan modification which removes these provisions. In order to remain in the IDR program, Debtor must re-certify annually according to the IDR guidelines.

c. Automatic Stay - Debtor waives any 11 U.S.C. § 362(a) stay causes of action and claims against the Department of Education and the Title IV Loan Holder for its communication, payment processing, and recertification of, as well as enrollment in, the debtor's IDR plan.

d. Payment Provisions – The estimated total amount of payments to the student loan creditor is provided for in §5.3 Specially Classified Non-Priority Unsecured Claims of the plan and is derived from the following:

Title IV Loan Holder	Monthly Payment Amount	Number of Payments	Payment Start Date	Pre-Petition Arrearage Amount	Estimated Total

The payments will be made to the Title IV Loan Holder listed immediately above and the named payee must correspond to the line numbers in §9.2.1(a). The Title IV Loan Holder's payment due date is modified to accommodate the Chapter 13 Trustee's disbursement schedule. Creditors receiving monthly payments under this section shall not report a payment as late, charge a late fee, or decertify an IDR plan for late payments unless the untimely disbursement of the monthly payment by the Trustee was caused by the debtor's failure to make a full or timely payment under this plan.

e. Alternative Distribution (This plan will deviate from Section 7.2 Order of Distribution)

Trustee will pay as funds are available in the following order:

i. Conduit payments (§4.1)
ii. §5.3 Separately Classified Unsecured Claims in the monthly amount(s) set forth in §9.2.1(d).
iii. Monthly payments on secured claims as required by separate court order (§9.2);
iv. Attorney Fees and Administrative Expenses (§2.10, §2.11, §2.12);
v. Modified Claims and Claims Modified and Paid in Full (§4.3, §4.4);
vi. Conduit gap payments, Separately Classified Unsecured Claims gap payments and Post-Petition claims (§4.1, §4.5, §5.3 & §9.2.1);
vii. Pre-Petition Arrearage claims including Separately Classified Unsecured Claims arrearage claims set forth in §9.2.1(d) (§4.2, §5.3 & §9.2.1);
viii. Priority claims (§5.1, §5.2);
ix. Non-Priority Unsecured Claims (§5.4).

f. 100% Repayment

Debtor intends to pay §5.3 Separately Classified Unsecured Claims in the manner as set forth in this Plan. Debtor understands that, absent a significant unanticipated change in circumstances, this case must pay 100% to all other general unsecured creditors in order to receive a discharge in this case.

CHAPTER 13 PRESUMPTIVE ATTORNEY'S FEES GUIDELINES
Effective 2/1/2021

Pursuant to Local Rule 2016.2, the Court has adopted presumptive attorney's fees for services provided by debtor's attorneys. Nothing in Local Rule 2016.2 or these guidelines shall be construed to excuse an attorney from any ethical duties or responsibilities under any applicable rule or law. The court may revise these guidelines as it deems appropriate and will re-issue any revised guidelines with a notation of the effective date of the revision. **These guidelines are applicable to bankruptcy cases filed on or after February 1, 2021.**

The Presumptive Fee.

The presumptive fee, including costs, is $5,000.00 and may be awarded by the court through the confirmation order. To receive the presumptive fee, the attorney must certify that that the attorney has provided the following services in the case (or is willing to provide the services as applicable for no additional compensation):

1. Meet with the debtor to review the debtor's debts, assets, income and expenses;
2. Analyze the debtor's financial situation and render advice to the debtor in determining whether to file a petition in bankruptcy;
3. Counsel the debtor regarding the option of filing either a chapter 7 or chapter 13 case, discuss both procedures with the debtor, and answer the debtor's questions;
4. Advise the debtor of the requirements to obtain prepetition credit counseling and a post-petition financial management course from approved providers;
5. Prepare and file the debtor's petition, statements, schedules, plan, and related documents, and any amendments thereto which may be required. Verify that the information contained therein is consistent with the documentation provided by the debtor;
6. Prepare, file, and serve any motion that may be necessary to appropriately represent the debtor in the case, including but not limited to, motions to impose or extend the automatic stay.
7. Prior to filing, review the completed bankruptcy petition, statements, schedules, and related documents with the debtor and make necessary changes and additions. Obtain the debtor's signature and file the petition, statements, schedules, and related documents;
8. Determine the status of the debtor's eligibility for discharge; explain to the debtor which debts will not be dischargeable upon completion of the plan, with particular attention to student loans and domestic support obligations. If the debtor is not entitled to a discharge,

explain the consequences;

9. Based on the terms of the chapter 13 plan, explain what payments will be made directly by the debtor and what payments will be made by the chapter 13 trustee, with particular attention to mortgages, vehicle loan payments, and other secured debt;
10. Explain to the debtor how, when and where to make chapter 13 plan payments and that the first plan payment must be made to the trustee within 30 days of filing the petition;
11. Advise the debtor of the necessity of maintaining insurance on collateral;
12. Advise the debtor not to sell, give away or otherwise transfer any property without court approval;
13. Advise the debtor not to borrow money, incur debt, or refinance any loans without prior court approval;
14. Advise the debtor of the necessity of timely filing all tax returns and of paying all post-petition taxes;
15. Advise the debtor of the requirement to turn over tax returns each year to the trustee. If the plan provides for it, advise the debtor of the requirement to turn over tax refunds to the trustee each year;
16. Advise the debtor of the requirement to attend the § 341 meeting of creditors, and instruct the debtor as to the date, time and place of the meeting and the necessity of bringing a photo ID and acceptable proof of debtor's social security number to the meeting;
17. Collect, review, and submit documents to the chapter 13 trustee that are required in advance of the § 341 meeting of creditors.
18. Attend the § 341 meeting of creditors and any court hearings, either personally or through another attorney;
19. Timely serve the chapter 13 plan and any amended plan; and notice of confirmation hearing, on all creditors and other required parties;
20. Timely address objections to confirmation of the chapter 13 plan and any amended plan;
21. Review proof of claims. When applicable, amend the plan to address claims or object to improper or invalid claims;
22. With respect to claims secured by a debtor's residence, timely review *Notices of Payment Changes, Notices of Post-petition Fees*, *Notices of Final Cure Payment*, and *Responses to Notices of Final Cure Payment*; if necessary, take appropriate action;
23. When applicable, timely file proofs of claims on behalf of creditors;
24. File the *Certificate of Debtor Education*; and
25. File the *Chapter 13 Debtor's Certifications Regarding Plan Payments, Domestic Support Obligations and Section 522(q)*.

Services Not Included in the Presumptive Fee.

The presumptive fees do not include the following services:

1. Prosecution or defense of any adversary proceeding or evidentiary hearing;
2. Representation in any unanticipated litigation or contested proceedings arising from the debtor's failure to provide complete and accurate information to the attorney; and

Effective: 2/1/2021

3. Representation in or services provided for any matter not otherwise addressed in these guidelines, including motions for turnover, motions to value property, motions to avoid liens, motions to employ professional, and motion to confirm modified chapter 13 plans.

Election to Accept the Presumptive Fee.

Debtor's attorney must file the local form "Notice of Election to Accept the Presumptive Fee" concurrent with the filing of the initial plan. Unless ordered otherwise, an attorney's election to accept the Presumptive Fee is irrevocable and the court will not approve additional compensation for work necessary to confirm the initial or amended chapter 13 plan or in cases where the Court confirms no plan. The Presumptive Fee election does not prohibit debtor's attorney from seeking additional hourly compensation for services not mandated in these Presumptive Fee guidelines.

Separate Applications.

Unless a Presumptive Fee has been elected, debtor's attorney must file a separate application for allowance of compensation and reimbursement of expenses in compliance with Code § 330 and FRBP 2016(a). For services not mandated in these Presumptive Fee guidelines, debtor's attorney also must file a separate application for allowance of compensation and reimbursement of expenses.

Effective: 2/1/2021

Post-Confirmation Chapter 13 Issues

A. Continuing Disclosure Requirements

Assets of a debtor become property of the estate on the date of filing the bankruptcy. 11 U.S.C. §541. Additionally, in a Chapter 13 case, property of the estate is expanded beyond the parameters of §541 to include any property acquired by the debtor after the commencement of the case, but before the case is closed, dismissed or converted. 11 U.S.C. §1306(a); In re Dale, 505 B.R. 8 (9th Cir. B.A.P. 2014); In re Waldron, 536 F.3d 1239 (11th Cir. 2008). Remember "earnings" are included in Chapter 13 property of the estate. 1306(a)(2).

- **i.** Income and expense changes
  1. Loss of job/Decrease in income
  2. Increase in income or taking on additional job(s)
  3. Unexpected expenses
- **ii.** Assets
  1. Personal Injury or other causes of action
     a. Employment of special counsel (11 U.S.C. §327(e))
     b. Settlement (F.R.B.P. 9019(a); *See* Depoister v. Mary M. Holloway Foundation, 36 F.3d 582, 585-586 (7th Cir. 1994) & In Re A&C Properties, 784 F.2d 1377,1381 (9th Cir. 1986).)
  2. Inheritance, Life Insurance, Gifts, Property Settlements, etc. (11 U.S.C. §541(a)(5))

B. 3-5 Years is a Long Time- Common Issues and How to Address Them

- **i.** Incurring debt &/or disposing of property of the estate
  1. L.R. 4002 (D. NV) & Sec, 8.1 of D. NV. Chapter 13 from plan.
  2. Motion practice vs. Stipulations
- **ii.** Modified plans (11 U.S.C. §1329)
- **iii.** Lump sum payments
  1. Refinance
  2. Sale
  3. Bonuses, commissions and like compensation
- **iv.** Practice tips to help prevent and identify issues

C. Post Confirmation Claims

- **i.** 1305 Claims
  1. IRS- *In re Joye*, 578 F.3d 1070, 1074 (9th Cir. 2009) (determining that for the purposes of § 1305, tax claims "became payable" at the end of the tax year as opposed to when the tax return is due) (following *In re Dixon* from the 10th Cir. B.A.P. vs. *In re Ripley* from 5th Cir.- date return filed.)
- **ii.** Post-Petition Mortgage Fee Notices (F.R.B.P. 3002.1)
  1. Recent trends
- **iii.** Amended Proofs Of Claim
  1. Deficiencies (F.R.B.P. 3002(c)(3))
  2. IRS
  3. Claims filed by debtor's attorney (11 U.S.C. §501(c))
  4. Incorrect information in original claim
  5. Notice of Filed Claims- L.R. 3021 (D. NV.)

Local Rule 4002. DUTIES OF CHAPTER 13 DEBTORS BEFORE COMPLETING THEIR PLAN

(a) **Transfers of property and new debt**. Debtors are prohibited from transferring, selling, or otherwise disposing of any nonexempt personal property with a value of $1,000 or more or nonexempt real property with a value of $5,000 or more without court approval. Except as provided in 11 U.S.C. § 364 and § 1304, debtors may not incur new debt exceeding $1,000 without court approval.

(b) **Insurance**. Debtors must maintain insurance as required by any law, contract, or security agreement.

(c) **Support payments**. Debtors must maintain direct ongoing child or spousal support payments.

(d) **Compliance with applicable nonbankruptcy law**. Chapter 13 debtors must conduct their financial and business affairs in accordance with applicable nonbankruptcy law. This duty includes, but is not limited to, filing tax returns and paying taxes.

(e) **Wage order**. A debtor may request an order from the court directing debtor to obtain a voluntary wage deduction from his or her employer for payments to be made directly to the chapter 13 trustee. The order will request debtor to obtain the wage deduction within fourteen (14) days of entry of the order. A request for wage order must be made by filing with the court an ex parte application and a proposed order using the court's local form. Additionally, if a debtor becomes delinquent with chapter 13 plan payments, the chapter 13 trustee may direct the debtor in writing to obtain a wage order from the court, and debtor must request the wage order within twenty-eight (28) days of the trustee's written directive. If the debtor fails to timely request the wage order, the chapter 13 trustee may seek appropriate relief from the court, including dismissal or conversion of the case.

Faculty

Hon. Martin R. Barash is a U.S. Bankruptcy Judge for the Central District of California in Woodland Hills and Santa Barbara, sworn in on March 26, 2015. He brings more than 20 years of legal experience to the bench. Prior to his appointment, Judge Barash had been a partner at Klee, Tuchin, Bogdanoff & Stern LLP in Los Angeles since 2001, where he represented debtors and other parties in chapter 11 cases and bankruptcy litigation. He first joined the firm as an associate in 1999. Earlier in his career, Judge Barash worked as an associate of Stutman, Treister & Glatt P.C. in Los Angeles. He also has served as an adjunct professor of law at California State University, Northridge. Following law school, Judge Barash clerked for Hon. Procter R. Hug, Jr. of the U.S. Court of Appeals for the Ninth Circuit from 1992-93. He is a former ABI Board member, for which he served on its Education Committee and currently serves on its Committee for Diversity, Equity, and Inclusion, and he is a judicial advisor to ABI's annual Southwest Bankruptcy Conference and its Consumer Practice Extravaganza. Judge Barash is a former member of the Board of Governors of the Financial Lawyers Conference and currently serves a judicial director of the Los Angeles Bankruptcy Forum, where he is a member of its Committee on Diversity, Equity and Inclusion. He also is a volunteer for the Los Angeles chapter of Credit Abuse Resistance Education (CARE) and was recognized nationally as the CARE Volunteer of the Year for 2022. Judge Barash has served on numerous committees of the U.S. Bankruptcy Court for the Central District of California and currently serves as chair of its Education Committee, which is responsible for conducting educational programs for judges, law clerks and externs. He is a frequent panelist and lecturer on bankruptcy law and a co-author of the national edition of the *Rutter Group Practice Guide: Bankruptcy*. Judge Barash received his A.B. *magna cum laude* in 1989 from Princeton University and his J.D. in 1992 from the UCLA School of Law, where he served as member, editor, business manager and symposium editor of the *UCLA Law Review*.

Benjamin M. Chambliss is an associate with Larson & Zirzow, LLC in Las Vegas, primarily representing debtors and creditors in both consumer and business bankruptcies filed under chapters 7 and 13 and subchapter V. He began practicing bankruptcy law in 2010 as a staff attorney to Rick A. Yarnall, one of Southern Nevada's two standing chapter 13 trustees. Counseling the trustee for over eight years, Mr. Chambliss oversaw the administration of hundreds of chapter 13 cases and litigated a variety of complex bankruptcy-related matters resulting in multiple published and unpublished decisions by the U.S. Bankruptcy Court for the District of Nevada. Prior to joining Larson & Zirzow, he was the senior bankruptcy attorney at one of the highest-volume consumer bankruptcy firms in Nevada for more than four years. Mr. Chambliss successfully prosecuted numerous automatic stay and discharge violations, and assisted in prosecuting violations of the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. He is licensed to practice in Nevada and Colorado, and in the U.S. District Courts for the District of Nevada and the District of Colorado. Mr. Chambliss is a member of ABI, the National Association of Consumer Bankruptcy Attorneys and the Southern Nevada Association of Bankruptcy Attorneys. He received his B.A. in 2006 from the University of Nevada, Las Vegas and his J.D. in 2009 from the UNiversity of Nevada, Las Vegas William S. Boyd School of Law.

Danielle N. Gueck-Townsend is a staff attorney for Chapter 13 Trustee Kathleen A. Leavitt in Las Vegas. Prior to working for the Trustee's office starting in 2010, she represented debtors in both personal and business bankruptcies in the Southern District of California. Ms. Gueck-Townsend is li-

censed to practice law in Nevada and California (inactive). She received her B.A. from the University of Tulsa in Tulsa, Okla., and her J.D. from California Western School of Law in San Diego.

Daniel M. Riggs is the senior staff attorney to Rick A. Yarnall, Standing Chapter 13 Trustee in Las Vegas. Prior to joining the trustee's office in 2011, he clerked in a consumer bankruptcy firm and had an externship with Hon. Judge Mike K. Nakagawa. Mr. Riggs is admitted to practice in Nevada and Utah. He received his J.D. from the University of Nevada, Las Vegas William S. Boyd School of Law.