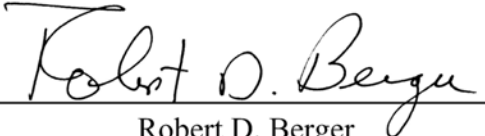


The relief described hereinbelow is SO ORDERED.

SIGNED this 3rd day of March, 2026.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

KATHLEEN GAIL ASHFORD,

Case No. 20-21228

Chapter 13

Debtor.

**ORDER SUSTAINING DEBTOR'S OBJECTION TO ATTORNEY FEES
IN PART**

This matter is before the Court on debtor Kathleen Ashford's objection to creditor First Federal Savings & Loan Bank's notice of post-petition attorney fees and expenses totaling \$19,888.88.¹ Citing Fed. R. Bankr. P. 3002.1(c), Ashford

¹ ECF 93 (notice); ECF 94 (objection). The Court has jurisdiction over this proceeding because it "arises in" a case under Title 11. *See* 28 U.S.C. §§ 1334(b),

argues that First Federal should be precluded from recovering such fees and expenses to the extent it incurred them more than 180 days before October 9, 2024, when the notice was filed and served.² The Court agrees and will sustain Ashford's objection as to the \$12,368.88 in fees and expenses incurred by First Federal prior to April 12, 2024— i.e., outside the 180-day window—for failure to comply with Rule 3002.1(c). The Court will also disallow the \$144.00 in attorney fees incurred by First Federal on September 25, 2024, for preparation of its fee notice. Consequently, only \$7,376.00 of the fees and expenses incurred by First Federal may be recoverable against Ashford or her residence under Rule 3002.1 and applicable nonbankruptcy law.

Fees or expenses for legal services to a mortgage creditor are generally “incurred” on the date when the service is performed. *See Collier on Bankruptcy* ¶ 3002.1.04. The fees and expenses at issue here were therefore incurred by First Federal between October 5, 2020, and September 25, 2024.³ The version of Rule 3002.1 in effect during that time period⁴ provided, in relevant part:

(a) In General. This rule applies in a Chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan

157(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(B). Ashford is represented by attorney Kristina Crump. First Federal is represented by attorneys Jon Gilchrist and Jacob Turner.

² Objection ¶ 3, ECF 94.

³ *See* Notice Ex. A, ECF 93.

⁴ Rule 3002.1 was amended effective December 1, 2024, and amended again effective December 1, 2025. *See* Fed. R. Bankr. P. 3002.1 advisory committee notes. All references in this order to Rule 3002.1 are to the pre-December 1, 2024 version of the rule.

provides that either the trustee or the debtor will make contractual installment payments.

. . .

(c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

. . .

(i) Failure to Notify. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Fed. R. Bankr. P. 3002.1(a), (c), (i). An advisory committee note adds:

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

Fed. R. Bankr. P. 3002.1 advisory committee note (2011). Rule 3002.1 “is designed to prevent unexpected deficiencies in mortgage payments when a case is completed and closed.” *Collier on Bankruptcy* ¶ 3002.1.01.

This is a Chapter 13 case in which (1) First Federal’s claim is secured by a security interest in Ashford’s principal residence and (2) Ashford’s plan provides for the trustee to make contractual installment payments.⁵ Thus, Rule 3002.1 applies, and First Federal may be precluded from recovering post-petition attorney fees and expenses if it did not file and serve notice of those fees and expenses within 180 days after incurring them.

According to First Federal:

In the Courtroom Minute Sheet from May 14, 2024 [ECF 86], the Court ordered that Debtor Kathleen Ashford was to pay the fees and costs of Creditor.

As such, Creditor First Federal Savings & Loan Bank hereby submits all the fees and costs it has incurred from the date of Debtor filing bankruptcy⁶

However, the May 14, 2024 minute sheet to which First Federal refers (ECF 86) is neither captioned as an order nor signed and, therefore, does not constitute an order. *See Walters v. Wal-Mart Stores, Inc.*, 703 F.3d 1167, 1171 (10th Cir. 2013). That said, the next entry on the docket—the notice of electronic filing entered on May 14, 2024 (ECF 87)—provides:

ORDER CONTINUING HEARING.

⁵ See Second Am. Plan § 10.2, ECF 36.

⁶ Notice of Attorney Fees ¶¶ 2, 3, ECF 93.

Reason for continuance: D to pay fees and costs. So
ORDERED by s/ *Robert D. Berger*. . . . Hearing to be held
on 8/20/2024 at 01:30 PM

Because it is captioned as an order and signed, the notice of electronic filing (ECF 87) *does* constitute an order. However, the matters on the docket at the May 14, 2024 hearing were the Chapter 13 trustee’s motion to dismiss (ECF 64), which he later withdrew; First Federal’s notice of delinquency and right to cure (ECF 69); Ashford’s motion to abate plan payments (ECF 72); First Federal’s motion for stay relief (ECF 75); and Ashford’s motion to modify her plan (ECF 80), which she later withdrew. In other words, on May 14, 2024, there were no pending motions, notices, or objections regarding attorney fees for the Court to rule on. The notice of electronic filing simply confirmed the Court’s oral ruling that the May 14, 2024 hearing would be continued to August 20, 2024. Consequently, the sentence “Reason for continuance: D to pay fees and costs” was either dicta or an interlocutory order subject to revision under Fed. R. Civ. P. 54(b)⁷—and does not excuse First Federal from complying with otherwise-applicable rules.

Although First Federal incurred attorney fees and expenses as early as October 5, 2020, it did not file and serve the requisite notice until October 9, 2024.⁸

⁷ See Fed. R. Civ. P. 54(b) (order adjudicating fewer than all claims or rights and liabilities of all parties may be revised at any time prior to entry of judgment as to all claims and all parties); Fed. R. Bankr. P. 7054(a) (applying Fed. R. Civ. P. 54(a) through (c) to adversary proceedings); Fed. R. Bankr. P. 9014(c)(1) (applying Rule 7054 to contested matters); *Beem v. O.K. Indus., Inc.*, 495 F.3d 1217, 1225 (10th Cir. 2007) (stating that district courts generally remain free to reconsider their earlier interlocutory orders).

⁸ See Notice of Attorney Fees, ECF 93. Although Ashford correctly points out that First Federal’s October 9, 2024 notice did not comply with Rule 3002.1(d)—which

First Federal does not argue that its failure to provide notice of the fees and expenses it incurred more than 180 days before the notice—i.e., before April 12, 2024—was substantially justified or harmless. Under Rule 3002.1(i), then, First Federal is hereby precluded from presenting information of any post-petition fees and expenses it incurred prior to April 12, 2024.

First Federal's October 9, 2024 notice itemizes the following attorney fees and expenses incurred on or after April 12, 2024:

September 2024	\$144.00 fees
August 2024	\$1,695.00 fees \$20.88 expenses
July 2024	\$300.00 fees \$13.00 expenses
June 2024	\$225.00 fees
May 2024	\$3,878.00 fees
April 12–30, 2024	\$1,042.00 fees ⁹ \$203.00 expenses
Total fees and expenses	\$7,520.88

required the notice to be prepared on the appropriate official form and filed as a supplement to First Federal's proof of claim—a lender's failure to comply with Rule 3002.1(d) is not ground for sanctions under Rule 3002.1(i), which only provides for sanctions for failure to comply with subsections (b), (c), or (g) of the rule. Moreover, because the October 9, 2024 notice contained all of the information that would have been required on the official form (which First Federal subsequently filed on November 13, 2024, *see* Claim No. 6-1), First Federal's failure to comply with Rule 3002.1(d) was harmless.

⁹ First Federal's attorney timesheets reflect 3.8 hours of work at \$240/hour and 0.5 hours of work at \$260/hour during that time. $3.8(\$240) + 0.5(\$260) = \$1,042.00$.

Under Rule 3002.1(c), the Court must determine whether those fees and expenses are “required by the underlying agreement and applicable nonbankruptcy law.” Accordingly, the Court has conducted an *in camera* review of timesheets provided by First Federal’s attorneys.

According to those timesheets, First Federal incurred a \$144.00 attorney fee on September 25, 2024, for preparation of its fee notice. However, “[b]ecause a creditor has a duty under nonbankruptcy law to inform a debtor of amounts that come due under a mortgage, no fee should be charged to the debtor for filing the form providing notice of such amounts.” *Collier on Bankruptcy* ¶ 3002.1.04. For that reason, First Federal cannot recover the \$144.00 fee.

First Federal’s remaining attorney fees and expenses total \$7,376.00. Ashford’s mortgage note and applicable Kansas law authorize First Federal to recover its “reasonable” costs of collection, which may include attorney fees.¹⁰ In Kansas, the following eight factors should be considered in determining the reasonableness of an attorney fee:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;

¹⁰ See Mortgage Note ¶ 6, Claim 6-1 Part 2; Kan. Stat. Ann. § 58-2312.

- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

City of Wichita v. B G Prods., Inc., 845 P.2d 649, 654 (Kan. 1993) (applying Model Rule of Professional Conduct 1.5).

Having applied these factors, the Court finds that First Federal's remaining attorney fees and expenses are reasonable. First Federal is represented by excellent attorneys at a highly-reputable firm. Those attorneys possess the specialized knowledge required to provide competent representation in bankruptcy court. Their hourly rates of \$240.00 and \$300.00, respectively, are customary for the Kansas City area. The timesheets demonstrate that they performed their tasks efficiently. And the amount involved—approximately \$46,000 as of August 2024¹¹—is large enough to justify the expense. For those reasons, the Court finds that the \$7,376.00 in attorney fees and expenses incurred by First Federal constitute reasonable costs of collection under Ashford's mortgage note and applicable Kansas law. Rule 3002.1

¹¹ At the August 20, 2024 hearing, Ashford's attorney stated that First Federal had provided Ashford a loan payoff amount of \$46,000 plus \$18,000 in post-petition attorney fees.

will not preclude First Federal from collecting those fees and expenses from Ashford upon completion of her Chapter 13 case.

IT IS SO ORDERED.

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