

FILED
U.S. BANKRUPTCY COURT

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

WESTERN DISTRICT OF NC
BY WJ DEPUTY

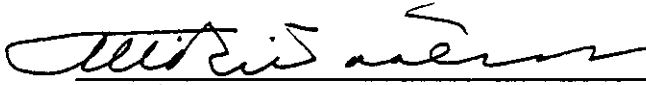
IN RE:)
)
LOCAL RULES OF BANKRUPTCY)
PRACTICE AND PROCEDURE.)
_____)

ORDER AMENDING LOCAL RULES
OF BANKRUPTCY PRACTICE
AND PROCEDURE

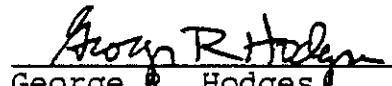
IT IS HEREBY ORDERED that

The attached amendment to Rule 31 of the Local Rules of Practice and Procedure is adopted pursuant to Federal Bankruptcy Rule 9029. The amendment shall take effect on January 1, 1988. This amendment shall apply in all cases and proceedings now pending except to the extent that their application in a pending case or proceeding would not be feasible or would work injustice, in which event the unamended version of the rule applies.

Dated: February 16, 1988.



Marvin R. Wooten
Chief U.S. Bankruptcy Judge



George R. Hodges
U.S. Bankruptcy Judge

Local Rule No. 31
Chapter 13 Attorney Fee Procedure

I. Amount of Fee

- (a) There shall be a presumption that a base fee of \$650.00 is a fair fee for an attorney to charge for filing and handling a non-business Chapter 13 proceeding; however, attorneys are encouraged to negotiate a lesser fee with the client if actual time and materials would warrant.
- (b) Any fee or non base services that may be incurred over the life of the Chapter 13 proceeding must be applied for and approved by the Court. For fees and expenses under \$500.00, notice need only be sent to the debtor(s) and the trustee. For fees and expenses of \$500.00 and above, all parties in interest must be noticed.

II. Definition of Base Fee Services

- (a) The following actions would be included in the base fee:
 - 1. Preparation and filing of petition and attendance at Section 341 meeting.
 - 2. Notice to stay state court actions.
 - 3. Proof of claim filed by debtor for creditor.
 - 4. Lien avoidances.
 - 5. Rejections or assumptions of leases.
 - 6. Motion to transfer venue.
 - 7. Letter to trustee requesting payoff.
 - 8. Letter to debtor about discharge.
 - 9. Review of order confirming plan and six-month report.
 - 10. Objections to claims listed on the schedules.
- (b) Services not presumed covered by base fee for which an hourly fee or specific charge may be approved by the court (basically categorized as the result of situations the debtor causes or could control):
 - 1. Abandonment of property post-confirmation.

2. Motion for moratorium.
3. Motion for authority to sell property.
4. Motion to modify.
5. Motion to use cash collateral or credit cards.
6. Defense of motion for relief from stay or co-debtor stay.
7. Defense of motion to dismiss.
8. Valuation hearings (except in relation to confirmation).
9. Objections to claims not listed on schedules.
10. Non-base fee requests.
11. Stay violation litigation.
12. Insurance inquiries.
13. Post-discharge injunction actions.
14. Adversary proceedings.
15. Wage garnishment orders.
16. Turnover adversaries.
17. In the Court's discretion, any other matter not covered by (b) above.

III. Business Chapter 13 Fee

- (a) There is no presumptive fee for a business Chapter 13. The fee must be negotiated between the attorney and the debtor, subject to review by the court on its own motion or on objection of any party.

IV. Form of application for fees

- (a) Applications for non-base fees are to show only time and materials spent on non-base matters. They must not show time or expenses spent on base fee matters.

Chapter 13 Practice and Required Forms

I. Disclosure of Attorney Fee Procedure

- A. The Disclosure to Debtor of Attorneys Fee Procedure attached hereto must be fully completed, signed by the appropriate parties and filed with each petition.

II. Applications and Orders for Additional Attorney Fees

- A. Applications for additional attorney fees must be filed on the attached court forms.

III. Chapter 13 Petitions

- A. Chapter 13 petitions must be filed on the form adopted and furnished by the Court.

**PRACTICE SUGGESTIONS WITH NON-BASE FEES IN CHAPTER 13 CASES
IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA**

By local rule, the United States Bankruptcy Court for the Western District of North Carolina has instituted a fee procedure for "additional" fees in Chapter 13 cases which are essentially key fees for services performed beyond those normally contemplated in a Chapter 13 case. The local rule sets forth what are called "base" and "non-base" matters related to fees in Chapter 13 cases. "Base" matters are matters included in the presumptive fee which is set by the new local rule at \$650.00. "Non-base" matters are matters which are not covered by the presumptive fee and for which additional attorney's fees may be charged and awarded subject to review by the Court. The new local rule contains a listing of both "base" matters and "non-base" matters and should be reviewed closely. The theory behind the "non-base" matters are that they are matters which result from situations the debtor causes or could control. It should be noted that the new local rule does not deal with business Chapter 13 cases. There is no presumptive fee for business Chapter 13. Therefore, the "base" and "non-base" distinction does not apply to business cases and the fee should be negotiated between the attorney and the debtor subject to review by the Court upon objection of any party. As with any bankruptcy case, the full arrangements for non-business Chapter 13 case fees should be set out in a fee disclosure and signed by both the attorney and the debtor.

Included in these materials is a Disclosure to Debtors of Attorneys Fee Procedure for Chapter 13 Cases in the United States Bankruptcy Court for the Western District of North Carolina. The new local rule requires that this disclosure be given to each Chapter 13 debtor and that a copy of same signed by the debtor(s) and the attorney representing said debtor(s) be filed with the original petition. A review of this Disclosure form sets forth the same matters as far as "base" and "non-base" matters as are covered in the local rule. Also included in the materials contained herein is a form Application for non-base attorneys fees and reimbursement of expenses. Review of this form will indicate that a detailed timesheet should be attached to the form and marked Exhibit "A". Such a timesheet should describe the service rendered and the amount of time spent. The entry for each item of legal service should show the nature of the service and its relation to the case. A listing of "telephone call from John Smith" would not be sufficient. There must be enough detail to allow the Court to understand exactly what was done in the time spent.

Also included in the materials herein is a Notice of Application for fees. By new Rule 2002 of the Rules of Bankruptcy Procedure, in cases where the fees applied for plus expenses total \$500.00 or less, notice of the additional fees need only be given to the debtor(s) and the trustee. In situations where the fees applied for exceed \$500.00, all parties in interest must be noticed.

You will also notice that the Notice of Application is a "no-protest" notice. No hearing should be necessary in most additional fee matters unless a party in interest files an Objection to Fee Application and Request for Hearing

as set forth in the notice, or unless the Court wishes to review the fees requested on the record. Therefore, the number of hearings on additional fees in Chapter 13 cases should be greatly reduced.

Obviously, communication with the debtor(s) of the possibility of additional fees being charged in their Chapter 13 case is an important matter which should be discussed with the debtor(s) prior to the filing of the petition. Communication is essential to cut down on the number of objections received from debtors. The Disclosure form set out herein should be reviewed closely with the debtors so that there is no question that the debtor(s) had notice of the possibility of additional fees. Special emphasis should be made upon the portion of the disclosure form which indicates that it is possible that "non-base" fees approved by the Court may cause the Chapter 13 payments to be increased or the term of the Chapter 13 plan to be extended. The debtor(s) need to understand that when the attorney does additional work, they are ultimately paying even though the fees are coming out of their Chapter 13 payments.

Often it will be necessary for the Chapter 13 case of the debtor(s) to be modified because of an additional fee awarded to the attorney. It has been the basic procedure of the Bankruptcy Court for the Western District of North Carolina to allow modifications of the Chapter 13 plan for additional fees without notice to parties in interest if the modification does not affect payments to secured creditors or reduce the payout to unsecured creditors. It is anticipated that this procedure will continue so that no case-wide notice would be necessary for an increase in the debtor(s)' payments or an extension of the term of the Chapter 13 case as a result of the awarding of additional fees. If an additional fee that is awarded requires a modification which does affect the payments to secured creditors or affect the payout to unsecured creditors, it is anticipated that the trustees in such cases will either file their own motions to modify and notice all creditors or will contact the attorney receiving the additional fee award to request that the attorney involved send out a notice setting forth the proposed modification and set a hearing for the Court to determine whether or not to allow the proposed modification.

Also included in the forms herein is a form Order awarding non-base fees. Obviously this form order will work in many cases. However, there may be special cases wherein the attorney requesting the additional fees might wish to prepare a more detailed order.

Also included in the materials herein is a form motion to modify Chapter 13 plan which includes within its provisions a paragraph requesting an additional fee for the work done. Since new Rule 2002 of the Rules of Bankruptcy Procedure does not require a case-wide notice for the awarding of additional fees of \$500.00 or less, many additional fee matters can be handled by including same in pleadings such as the form motion to modify with the request for the additional fee being covered at the hearing held upon the matter for which the pleading is actually directed. Thus, there may be many instances wherein the additional fee application and notice included herein will not even be necessary as the form Notice for the Motion to Modify set forth herein also sets forth therein notice of the proposed additional fee. Therefore, in any

situations where a hearing is being set upon a proposed action of the debtor(s), the proper procedure would appear to be to go ahead and request the additional fees (if \$500.00 or less including expenses) in the pleading requesting the relief that is sought and including in the notice related thereto a paragraph giving notice of the request for fees. Such a procedure will cut down paperwork in the Bankruptcy Court and allow the attorney requesting the additional fee to have same entered at the hearing upon the matter to which his pleading was primarily directed.

It is hoped that the above suggestions will be useful to attorneys requesting non-base fees in Chapter 13 cases.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
DIVISION

IN RE:

Debtor(s).

Case # _____
(Chapter 13)

NOTICE OF APPLICATION BY ATTORNEY FOR THE DEBTOR(S)
FOR ADDITIONAL ATTORNEY'S FEES AND REIMBURSEMENT OF EXPENSES
AND NOTICE OF OPPORTUNITY FOR HEARING

TAKE NOTICE that _____, Attorney for the debtor(s) has filed an Application in this court for the awarding of additional attorney's fees for "non-base" services as that term is defined in the local rules of this court and for the reimbursement of expenses related to said services. The "non-base" services performed and the expenses related thereto are summarized as follows:

Attorney's Time:	_____	hours
Requested Hourly Rate:	_____	per hour
Total Requested Attorney's Fee:	_____	
Total Requested Expenses:	_____	
Total Requested Fee Plus Expenses:	_____	

TAKE NOTICE that if the requested fees and expenses are awarded by the Court, the trustee may seek to modify the debtor(s)' Chapter 13 plan by either increasing payments or by extending the term of the plan.

TAKE NOTICE that any party in interest wishing to object to the subject fee request must file a written "Objection to Fee Application and Request for Hearing" within fifteen (15) days from the date hereof. Any such objection shall be filed in the Office of the Clerk of the Bankruptcy Court, 401 West Trade Street, Charlotte, North Carolina, 28202, with a copy to be served upon the debtor(s)' attorney at the address shown below.

In the event that no objection is filed and served, the Court will consider the Application on the basis of the record without further notice. If an objection is timely filed and served, the Court will set a hearing upon the Application and Objection; the date, time, and place of which will be noticed to the objecting party, the debtor(s), the trustee, and the attorney for the debtor(s).

Dated _____

Attorney for the Debtor(s)
Address
Phone Number

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this Certificate is affixed was served upon the other party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first-class postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service this the ____ day of _____, 19____.

Attorney

to debtor(s) and trustee if the total amount requested is
\$500.00 or less

(OR)

to all parties in interest if the total amount requested
exceeds \$500.00

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
DIVISION

IN RE:

Debtor(s).

Case # _____
(Chapter 13)

ORDER AWARDING NON-BASE FEES AND REIMBURSEMENT OF EXPENSES
TO THE ATTORNEY FOR THE DEBTOR(S)

THIS CAUSE, coming on to be heard and being heard by the undersigned Judge of the United States Bankruptcy Court upon the Application for Non-Base Attorney's Fees and Reimbursement of Expenses filed by the attorney for the debtor(s) and it appearing to the Court that there has been adequate Notice and a Hearing as that phrase is defined in the Bankruptcy Code and the Rules of Bankruptcy Procedure. Based upon the Application and the record, the Court finds that the attorney's fees requested are "non-base" fees as that term is defined by local rule of this Court and that the fees and expenses requested are reasonable. Accordingly,

IT IS ORDERED that _____, attorney for the debtor(s) be allowed an additional attorney's fee plus reimbursement of expenses totaling the sum of \$ _____. AND IT IS FURTHER ORDERED that the trustee is hereby directed to pay said fee from the proceeds of the Chapter 13 plan and at the direction of the Court, AND IT IS FURTHER ORDERED that the Chapter 13 plan of the debtor(s) be, and it hereby is, modified to the extent necessary to accommodate the subject fee.

Dated: _____

United States Bankruptcy Judge

DISCLOSURE TO DEBTOR(S) OF ATTORNEYS FEE PROCEDURE
FOR CHAPTER 13 CASES IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

After consultation with the undersigned attorney, you have decided to file a petition for relief under Chapter 13 of the United States Bankruptcy Code. Accordingly, you are hereby given notice that pursuant to local rule of the Bankruptcy Court, the base fee for a Chapter 13 case is established at \$650.00. Payment of this fee is included in your payments to the trustee. The attorney's services included in the base fee are those normally contemplated in a Chapter 13 case. They are the following:

- (a) Preparation and filing of petition and attendance at Section 341 meeting.
- (b) Notice to stay state court actions.
- (c) Proof of claim filed by debtor for creditor.
- (d) Lien avoidances.
- (e) Rejections or assumptions of leases.
- (f) Motion to transfer venue.
- (g) Letter to trustee requesting payoff.
- (h) Letter to debtor about discharge hearing.
- (i) Review of order confirming plan and six-month report.
- (j) Objections to claims listed on the schedules.

In some Chapter 13 cases, it becomes necessary for legal services to be performed which are beyond those normally contemplated. These are legal services not covered by the base fee. These "non-base" services include the following:

- (a) Abandonment of property post-confirmation.
- (b) Motion for moratorium.
- (c) Motion for authority to sell property.
- (d) Motion to modify.
- (e) Motion to use cash collateral or credit cards.
- (f) Defense of motion for relief from stay or co-debtor stay.
- (g) Defense of motion to dismiss.
- (h) Valuation hearings (except in relation to confirmation).

- (i) Objections to claims not listed on schedules.
- (j) Non-base fee requests.
- (k) Stay violation litigation.
- (l) Insurance inquiries.
- (m) Post-discharge injunction actions.
- (n) Adversary proceedings.
- (o) Wage garnishment orders.
- (p) Turnover adversaries.

For such "non-base" services you will be charged on the basis of attorney's time expended at the rate of \$ _____ per hour plus the amount of expenses incurred (such as court fees, travel, long distance telephone, photocopying, postage, etc.). Such "non-base" fees are chargeable only after same are approved by the Bankruptcy Court. Therefore, before any such fees are charged you will receive a copy of my motion filed in the court requesting approval of any such "non-base" fees as well as a notice explaining your opportunity to object if you do not agree with the fee applied for. Any fees awarded for "non-base" services will be paid to the undersigned attorney out of your payments to the trustee in the same way as payment of "base" fees. It is possible that "non-base" fees approved by the court may cause your payments to the trustee to be increased, or the term of your Chapter 13 plan extended. Whether or not a payment increase or an extension will be necessary depends upon the facts of your case. If a payment increase is necessary because of a court approved "non-base" fee, the trustee will notify you of the amount of the increase.

ACKNOWLEDGEMENT

I hereby certify that I have read this notice and that I have received a copy of this notice.

Dated: _____

Debtor

Dated: _____

Joint Debtor, if any

I hereby certify that I have reviewed this notice with the debtor(s) and that the debtor(s) have received a copy of this notice.

Dated: _____

Attorney

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

DIVISION

IN RE:

Debtor(s).

Case # _____
(Chapter 13)

APPLICATION FOR NON-BASE ATTORNEY'S FEE
AND REIMBURSEMENT OF EXPENSES

_____, attorney for the debtor(s), requests approval of a non-base attorney's fee and reimbursement of expenses for services rendered to the debtor(s), and in support thereof, respectfully shows unto the Court:

1. On _____, he prepared and filed a petition and plan on behalf of the debtor(s) under Chapter 13 of the Bankruptcy Code; and the plan was thereafter confirmed.

2. Concurrently with signing their petition, the debtor(s) read and signed a Disclosure to Debtors of Attorneys Fee Procedure for Chapter 13 Cases as mandated by local rule of this Court. A copy of said Disclosure signed by the debtor(s) was attached to the petition filed herein.

3. In his representation of the debtor(s), the undersigned has performed certain "non-base" services as that term is defined in local rules of this Court. Said services and expenses related thereto are set forth in detail on Exhibit "A" attached hereto and incorporated herein by reference.

4. The "non-base" services performed and expenses related thereto are summarized as follows:

Attorney's Time:	_____	hours
Requested Hourly Rate:	_____	per hour
Total Attorney's Fee:	_____	
Total Expenses:	_____	
Total Fee Plus Expenses:	_____	

WHEREFORE, the undersigned respectfully prays the Court as follows:

1. That he be awarded a "non-base" fee plus reimbursement of expenses totaling the sum of \$ _____; and

2. That the debtor(s)' Chapter 13 plan be modified as necessary to accommodate said award; and

3. For such other and further relief as is just and proper.

Dated _____

Attorney for the Debtor(s)
Address
Phone Number

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this Certificate is affixed was served upon the other party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first-class postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service this the ____ day of _____, 19____.

Attorney

Debtors and Trustee