

In The
UNITED STATES BANKRUPTCY COURT
for the
WESTERN DISTRICT OF NORTH CAROLINA



In Re:)
Chapter 13 Presumptive)
Attorneys Fees)
_____)

ADMINISTRATIVE ORDER

JUDGEMENT ENTERED ON MAR 11 2002

The court has determined that it is in the best interests of justice to revise its schedule of presumptively permitted attorneys fees in Chapter 13 cases filed electronically in accordance with the schedule attached to this Administrative Order as Attachment 1. In summary, the revision permits a presumptive base fee of up to \$1,600.00; revised presumptive non-base fees, including a fee of \$450.00 plus costs for debtor and creditor work in relation to a relief from stay motion; and for payment of fees from the Chapter 13 Plan in the same manner as has been the practice in each of the respective divisions of this district. The revised fees for debtor(s)' attorneys apply only in cases filed electronically; and for creditor's attorneys only with respect to motions filed electronically. This Administrative Order shall be effective immediately, subject to modification after a period for comment by interested parties.

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The court states the following reasoning for this Administrative Order:

1. This Administrative Order was spawned by the work of the Local Rules Committee, and is based upon the research provided by that Committee and the input of interested parties at an open forum conducted by the court.

2. The court rejected the Committee's recommendation that the presumptive base fee system be suspended for a trial of a system of fees set by individual attorneys and approved without formal application. This suggestion was rejected for several reasons: (a) the court does not believe that an unregulated fee system is workable nor permitted by the Bankruptcy Code; (b) there was not universal consensus for it; (c) similar systems are rare in other districts, and in one of them it is being scrapped; and (d) the court believes the system used by this court has served the public well and will continue to do so with minor revisions. The court notes that the presumptive fee is the maximum fee presumptively approved, and competition is open below that figure.

3. The approved presumptive base fee of up to \$1,600.00 is among the higher amounts in the range of fees permitted by courts in the Southeast. The court believes that it is merited for a number of reasons, including: (a)

the overall competence of the Bar of this court; (b) increased responsibilities of the debtor's attorney in proper representation of the debtor (as shown by the expanded list of included services in Attachment 1; (c) increased duties imposed on the debtor's attorney as a result of changes in the filing requirements of the court; (d) comparable fees in similar courts, particularly courts using the electronic case filing system; and (e) general market increases in the six years since these fees were last adjusted. The fee for both debtor and creditor work in respect to a relief from stay motion was set at \$450.00 based on the amount of work normally required for such motions and in recognition of the fact that the amount of work required is roughly equivalent for both debtor's and creditor's attorneys. Other revisions of the non-base fee schedule were made to catch up to general market conditions.

4. The court declined to change the procedure for payment of fees from the Chapter 13 Plan for several reasons: (a) any acceleration of the payment of attorneys' fees risks jeopardizing adequate protection payments to creditors; (b) there was no consensus among interested parties for changing current practices; and (c) prospective debtors' attorneys are the persons with the last clear opportunity to protect themselves from debtor defaults.

5. Several methods of dealing with any diversity of performance of services in Chapter 13 cases were discussed by the Committee. The court declined to adopt any system for generalized determinations of performance, such as the North Carolina Bar's specialty certification or a "tiered" system of compensation. Rather the court by this Order instructs the Chapter 13 Trustees to advise the court by motion of any deficiencies in performance in any case. The court will order disgorgement of fees or other sanctions where the presumptive fee has not, in fact, been earned.

6. This system of presumptively approved base and non-base fees is merited by the volume of Chapter 13 cases handled in this district and the repetitive nature of much of the work involved. The system is a convention that approximates as closely as possible the actual work and fees required for such work; while avoiding the additional effort and expense to document and support individual fee applications for each matter. The court believes that--in the ordinary Chapter 13 case--this system of presumptive fees fairly compensates attorneys and reduces the cost to the debtor's estate. In cases where the attorney believes that a base fee in excess of the prescribed amount is merited, e.g., in business Chapter 13 cases, the court permits individual documentation of time and expenses and

application for fees pursuant to the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and other Local Rules. In the event that an attorney elects to be compensated pursuant to this application process, it must be done in the beginning of the case with disclosure to the debtor(s).

Based upon the foregoing, it is hereby ORDERED that:

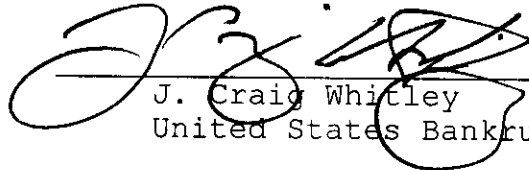
1. The schedule of presumptively approved base and non-base fees in Chapter 13 cases set forth on Attachment 1 to this Order, and incorporated herein by reference, is adopted by the court. This schedule of revised fees is applicable for debtor(s)' attorneys only in cases (and other pleadings) filed electronically; and for creditor's attorneys only for pleadings filed electronically. Payment of fees from the Chapter 13 Plan shall be made in accordance with current practices adopted by the Chapter 13 Trustees in each division.
2. Any interested party shall have thirty days after entry of this Order to comment on it. Such comments shall be by way of written correspondence to the Clerk, United States Bankruptcy Court,

Western District of North Carolina, Post Office
Box 34189, Charlotte, NC 28234-4189; or email to
gerri@ncbankruptcy.org.

3. This Administrative Order is effective immediately and shall remain effective until modified by the court by subsequent order.
4. The Clerk is directed to publish this Administrative Order in the Office of the Clerk in Charlotte and Asheville; and on the court's website.



George R. Hodges
United States Bankruptcy Judge



J. Craig Whitley
United States Bankruptcy Judge



Marvin R. Wooten
United States Bankruptcy Judge

Revisions to Local Rule 2016-1

Rule 2016-1 Professional Fee Applications

5. Compensation of Attorneys in Chapter 13 Cases.

a. Subject to paragraph 6, e., below, the amount of the fee in cases and with respect to pleadings filed electronically:

(1) The base fee in a Chapter 13 case is up to \$1,600.

(2) Any fee for non-base services that may be rendered a Chapter 13 debtor must be applied for and approved by the Court. For fees and expenses under \$500, notice need only be sent to the debtor(s), the trustee and the Bankruptcy Administrator. For fees and expenses of \$500 or more, all parties in interest must be noticed. If a no-protest notice is used, it shall be given using the form annexed to these Local Bankruptcy Rules as Local Form 4.

(3) Where substitute counsel is retained by a Chapter 13 debtor, the attorney may collect a base fee of \$450.

b. In cases and with respect to pleadings not filed electronically, the base fee is up to \$1,300 and all other fees scheduled in this Rule 2016-1, 5, 6, and 9, shall be reduced by \$100.

6. Definition of Base Fee Services.

a. The Base Fee shall be presumed to compensate the debtor(s)' attorney for a level of services to the debtor(s)' that shall at a minimum include the following services:

(1) Preparation and filing of petition, schedules, supplemental local forms, Chapter 13 plan and matrix;

- (2) Drafting and mailing notice to all creditors advising of filing of the case, including copy of the Chapter 13 plan;
- (3) Drafting and mailing letter to debtor(s) regarding attendance at the § 341 meeting, escrow of first money, and other responsibilities of the debtor(s);
- (4) Preparation for and attendance at the § 341 meeting;
- (5) Review of confirmation order and periodic case status reports from the trustee;
- (6) Review of trustee's motion for allowance of claims;
- (7) Maintaining custody and control of all case files with original documents for such periods prescribed by law or court rule;
- (8) Service of orders on all affected parties;
- (9) Verify debtor(s) identity and social security number.

b. The Base Fee shall also include the following services to the extent they are requested or reasonably necessary for effective representation of the debtor(s):

- (1) Preparation and filing of proofs of claim on behalf of the debtor for a creditor;
- (2) Drafting and filing of objections to scheduled and unscheduled proofs of claim;
- (3) Assumptions and rejections of unexpired leases and executory contracts;
- (4) Preparation for and attendance at valuation hearings;
- (5) Motions to transfer venue;
- (6) Requesting copies of proofs of claim from trustee;
- (7) Consultation with the debtor(s) regarding obtaining post-petition credit, where no formal application is ultimately filed;

- (8) Drafting motions to avoid liens pursuant to 11 U.S.C. § 522(f);
- (9) Calculation of plan payment modifications, where no formal motion is ultimately filed;
- (10) Adding creditor addresses to the master mailing matrix pursuant to filed proofs of claim and notices of appearance or assignment of claims;
- (11) Responding to written creditor contacts regarding plan terms, valuation of collateral, claim amounts, and the like;
- (12) Responding to debtor contacts regarding job losses, changes in financial circumstances, address changes, and formally advising the court and the trustee of the same;
- (13) Communicating with the debtor(s) regarding mortgage payment defaults, lease defaults, insurance coverage or the lack thereof, warranties, possible credit disability and life insurance coverage, and the like;
- (14) Obtaining and providing the trustee with copies of documents relating to lien perfection issues, such as recorded deeds of trust, purchase money security agreements, and the like;
- (15) Drafting and mailing letters to creditors upon entry of discharge regarding lien releases, turnover of clear title certificates, cancellation of deeds of trust and judgments, and the like;
- (16) Drafting and mailing certified letter to creditors regarding matters related to alleged violations of the automatic stay;
- (17) Drafting and mailing letters regarding voluntary turnover of property;
- (18) Review of documents in relation to the use or sale of collateral when no formal application is ultimately filed;
- (19) Providing the debtor(s) with a list of answers to frequently asked questions; and other routine

communications with the debtor(s) during the pendency of the case.

- c. The following services are presumed not to be covered by the base fee, and additional compensation may be awarded by the Court for the following services. Non-base fees may not be requested of the debtor(s) or paid by the debtor(s) or any other person, in trust or otherwise, without prior approval of the Court:
- (1) Abandonment of property post-confirmation;
 - (2) Motion for moratorium;
 - (3) Motion for authority to sell property;
 - (4) Motion to modify plan;
 - (5) Motion to use cash collateral or to incur debt;
 - (6) Defense of motion for relief from stay or co-debtor stay;
 - (7) Defense of motion to dismiss;
 - (8) Objections to claims not listed in schedules;
 - (9) Non-base fee requests;
 - (10) Stay violation litigation, including amounts paid as fees by the creditor or other party;
 - (11) Post-discharge injunction actions;
 - (12) Adversary proceedings;
 - (13) Wage garnishment orders;
 - (14) Turnover adversaries;
 - (15) Conversion to Chapter 7;
 - (16) Motions to substitute collateral;
 - (17) Any other matter not covered by paragraph 6, a. above.

d. In the Court's discretion, a debtor(s)' attorney in a Chapter 13 proceeding may request, in open court, and without any further notice, non-base fees for the following services and in the amounts not exceeding those shown below. Without other notice, the debtor(s)' attorney may also request the actual expenses of filing fees and of notice to creditors.

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|---|-------|
| (1) Defense of motion to dismiss | \$200 |
| (2) Motion to modify and order
(including motion for moratorium) | \$350 |
| (3) Substitution of collateral | \$450 |
| (4) Prosecution or defense of motion
for relief from stay or co-debtor
stay and order | \$450 |
| (5) Motion for authority to sell
property and order | \$450 |

e. These standard base and non-base fees are intended as a convention to reduce expense to the parties. Counsel may, alternatively, apply for non-base fees on a time and expenses basis in accordance with FED. R. BANKR. P. 2016 and 11 U.S.C. § 330. In cases where counsel elects this procedure, it must be done at the beginning of the case and with appropriate disclosure.

9. Payment of Attorneys Fees in Chapter 13 Cases.

- a. An attorney may accept an amount of compensation in advance of the filing of the Chapter 13 case up to the maximum of \$1,600 base fee on the following conditions:
- (1) All court filing fees must be paid in full at the time the case is filed (no installment fees to be applied for), and
 - (2) The debtor(s) must appear at the time first set for the § 341 meeting with no less than one (1) full month's Plan payment to turn over to the trustee.
- b. If an attorney accepts a retainer and either (a)(1) or (a)(2) above is not met, the attorney must pay the

delinquent fees and/or Plan payment from the retainer held.