

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

LOCAL RULE AMENDMENTS,

Debtor(s).

ADMINISTRATIVE ORDER

Upon the agreement of the Judges of the Court and after notice and comment by the Court's Advisory Committee on Rules and Practice, the bar, and public, the Local Rules for this Court are amended as follows:

SC LBR 2016-1 Compensation of Professional Persons:

- a. **Chapter 11 Cases.** In a chapter 11 case, a professional paid a retainer shall maintain the retainer in a trust account and shall not draw on the retainer post-petition without approval of the Court. A trustee, examiner, attorney for the debtor, or any professional person employed under 11 U.S.C. §§ 327, 328, or 1103 may apply for allowance of compensation and reimbursement of expenses on or after thirty (30) days after the date of the order for relief. A second application may be made on or after sixty (60) days after the first application, and a third application may be made on or after ninety (90) days after the second application. After one hundred eighty (180) days following the date of the order for relief, applications may not be made more than once every one hundred twenty (120) days, unless the Court orders otherwise.
- b. **Chapter 13 Cases.** An attorney representing a debtor in a chapter 13 case may obtain approval of attorney's fees without the filing of a formal fee application and a hearing when the attorney and the debtor(s) agree in writing that the fee for representation will be equal to or less than \$5,000.00 for the representation of consumer debtor(s) and \$6,000.00 for representation of debtor(s) engaged in business at the time of the filing of the case (collectively, the "Expedited Fee Amount").
 1. **Definition of Business Case.** A debtor shall be considered to be engaged in business for purposes of this Rule if: (1) the debtor's business meets the requirements of 11 U.S.C. § 1304; or (2) a significant amount of the debtor's and/or the debtor's spouse's income necessary for performance under the debtor's chapter 13 plan is derived from the debtor's and/or the debtor's spouse's business.
 2. **Expedited Fee Amount.** The Expedited Fee Amount includes all actions required for representation of the debtor from the pre-filing initiation of the representation to the conclusion of the case (whether by dismissal, conversion, discharge, or closing),¹ **except** the following:
 - a. Adversary proceedings
 - b. Appeals
 - c. Motions to Reconsider Dismissal
 - d. Motions to Reopen
 - e. Defending or Settling Motions for Relief from Stay
 - f. Motions to Impose Stay
 - g. Pre-Confirmation Motions to Incur Debt

¹ Attorneys should review their duty to represent the debtor under SC LBR 9011-1(b). SC LBR 2016-1(b)(2) only addresses what services are covered by the expedited fee amount. Attorneys should also review case law regarding their duty to the debtor and payment. Rule 2016-1(b) does not alter existing case law.

- h. Pleadings relating to the sale of property, substitution of collateral, and disbursement of insurance proceeds (unless contemplated by the debtor's plan)
 - i. Defending or settling motions to dismiss by parties other than the chapter 13 trustee
 - j. Motions to Divide or Sever Case
 - k. Motions to Substitute Attorney or Take Over Case
 - l. Post-confirmation modified plans, including motions to modify
 - m. Student loan services
 - n. Loss mitigation services
3. **Responsible Attorney of Record.** The attorney filing the chapter 13 petition on behalf of the debtor(s) is deemed the responsible attorney of record for all purposes. If the attorney seeks additional fees for a service not listed in section (b)(2)(a-n) (including unanticipated, extraordinary matters requiring exorbitant amounts of attorney time), the attorney may file a Statement of Supplemental Fees under section 6. The Statement should detail the time spent and the services provided as well as an explanation regarding why the service should not be included in the Expedited Fee Amount.
4. **Administrative Claim.** Unless the Court orders otherwise, the expedited fee is deemed an allowed administrative claim under 11 U.S.C. § 503(b)(2). The amount may be claimed by the attorney's filing of Form B2030. The B2030 Form shall clearly indicate the fee agreed upon, the amount paid to date, and the amount to be paid through the plan, and shall define any charges or potential charges for supplemental fees. Counsel must include as an attachment to the B2030 Form, a copy of counsel's signed representation agreement with the debtor(s).
5. **Initial Disbursement.** After confirmation, and to the extent funds are available after deduction of the Trustee's commission, the Trustee may disburse up to \$1,500.00 as part of the initial disbursement under the plan.
6. **Statement of Supplemental Fees.** Any supplemental compensation charged by the debtor's attorney and relating to the debtor's bankruptcy case must be disclosed, whether that amount will be paid through disbursements by the Trustee or paid directly by the debtor(s) or by a third party on behalf of the debtor(s), to the Court and all parties-in-interest by utilizing the "Statement of Supplemental Chapter 13 Attorney Fees and Costs" event in CM/ECF ("Statement").² The Statement shall contain a description of services provided with sufficient information to determine whether the supplemental fee is fair and reasonable. The Statement must be used for the disclosure of any supplemental compensation that will be paid through disbursements by the Trustee or paid directly by the debtor(s). Notice of the Statement must be provided to the debtor(s) and the Trustee. All supplemental fees approved for disbursement by the Trustee or approved as a direct payment by the debtor(s) remain subject to the Court's consideration of the fee under 11 U.S.C. § 329(b) at any time prior to the closing of the case.
- i. **Before Confirmation.** Upon plan confirmation, the supplemental fees set forth in the Statement are deemed approved for disbursement by the Trustee or, if the fee or costs have been or will be paid directly by the debtor(s) or a third party on behalf of the debtor(s), are deemed approved as a direct payment by the debtor(s).
 - ii. **After Confirmation.** Unless an objection to the Statement is filed within fourteen (14) days of service or unless the Court orders otherwise, the supplemental fees or costs shall be approved for disbursement by the Trustee or, if the fees or costs have been or will be paid directly by the debtor(s) or a third party on behalf of the debtor(s), shall be approved as direct payment by the debtor(s) subject to the terms of the confirmed plan and these Rules.
7. **Application for Reimbursement of Chapter 13 Costs.** The Expedited Fee Amount includes all

² If the attorney enters into an agreement not previously disclosed, the attorney must file an updated Form B2030 within 14 days.

typical costs and expenses, except for filing fees and costs paid to non-attorney third parties for services necessary for the case, such as credit reports, credit counseling, and financial management course fees. If costs and expenses incurred by the attorney exceed \$50.00 for a single event or pleading, the attorney may file an application for reimbursement of costs using the Statement provided in subsection (b)(6). The Statement shall contain a detailed explanation of the costs incurred and whether the amount will be paid through disbursements by the Trustee or paid directly by the debtor(s).

8. **Time Limits.** A Statement under subsection (b)(6) or (7) shall be filed within 30 days after conclusion of the matter for which the fees or costs are requested.
9. **Review of Expedited Fee Amount.** The Advisory Committee on Local Rules, Practice, and Procedures shall review the Expedited Fee Amount at least every other year to determine if an increase is warranted. In addition to this biennial review, the Committee may review the Expedited Fee Amount for adjustments at any time the Committee or the Court determines that circumstances warrant review.
10. **Formal Application for Compensation.** In lieu of the Expedited Fee Amount, the attorney may apply for compensation pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2016(a) for actual services rendered and expenses incurred. The application and proposed order shall clearly indicate all compensation for the attorney that has been approved in the case prior to the application and report any pending applications. Attorneys electing this procedure shall estimate fees in the chapter 13 plan for confirmation purposes.

This amendment is applicable to compensation or retainer agreements, or amendments thereto, entered on or after July 1, 2024, when those agreements govern compensation for a case filed on or after July 1, 2024. Prior applicable rules shall govern all other compensation or retainer agreements entered and cases filed prior to July 1, 2024.

AND IT IS SO ORDERED.

/s/ Helen E. Burris
Helen E. Burris, Chief Judge