

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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IN RE:

Order Setting Procedures for Approval of
Attorney's Fees in Chapter 13 Cases,

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
OPERATING ORDER

07-12

In recognition that many chapter 13 cases require similar legal services, the Judges of this Court have agreed to adopt the procedures set forth herein to promote efficient management of applications for compensation by attorneys representing debtors, to standardize practices throughout the District, to provide fair and equitable treatment of debtors and their attorneys in chapter 13 cases, and to avoid undue burdens. The Court recognizes that the legal services required in a chapter 13 case may vary and therefore the fees that are appropriate may vary. Experience in this and other districts, however, indicates that a fee in the amount of \$3,000.00¹ is sufficient in most cases to fairly compensate an attorney for services through the conclusion of a typical non-business case. In some instances, events may require services for which additional fees should be allowed. This Order is not intended to set the fee in any chapter 13 case, but rather to establish an efficient procedure for approval of compensation for debtors' attorneys.² This Order is effective in all chapter 13 cases filed on or after January 1, 2008.

IT IS HEREBY ORDERED:

1. **Expedited Fee Approval Procedure.** Approval and payment of fees for an attorney representing a debtor in a chapter 13 case may be accomplished without the filing of a formal fee application and a hearing when the attorney and the debtor agree in writing that the fee for representation will be a total of \$3,000.00 or less for a non-business case and \$3,500.00 or less for a business case

¹ Per case, whether individual or joint.

² SC LBR 9014-2 does not apply to the procedure described herein except for the procedure described in paragraph 3.

(collectively, the “Expedited Fee Amount”).³ This amount includes all typical costs and expenses other than 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. Unless the Court orders otherwise, the Expedited Fee Amount shall be conditionally approved for disbursement upon confirmation of the plan as a result of the attorney’s filing of the Attorney Fee Disclosure Statement (“Statement”) pursuant to Fed. R. Bankr. P. 2016(b) and by the insertion of the appropriate amount due in the chapter 13 plan and service thereof.⁴ The Statement and Plan shall clearly indicate the fee agreed upon, the fee paid to date, and the fee to be paid through the chapter 13 plan. The Statement shall also define any charges or potential charges for supplemental fees described in paragraph (2) below.

2. **Application for Supplemental Fees.** If expressly authorized by a conspicuous provision of a written fee agreement attached to the Statement, the debtor(s) and attorney may agree to supplemental compensation of the attorney for additional work necessary as a result of any matters involving the default under or variance from the terms of the confirmed plan, adversary proceedings, appeals or for other complicating factors not present in the typical chapter 13 case.⁵

a. **Expedited Supplemental Fees Aggregating to \$1,000.00 or Less.** If an agreement for a supplemental fee is made between the debtor(s) and attorney and the total supplemental fee sought in the case does not exceed \$1,000.00 over the amount charged under paragraph 1, such fee may be asserted via paragraphs (i) and (ii) below.

³ A business case is defined, for the purposes of this order only, as a case in which a significant portion of the debtor’s gross income is derived from self-employment, and which involves other complicating factors not found in the average chapter 13 case that, taken as a whole, justify enhanced flat fee compensation.

⁴ Service of the plan on all parties in interest is required pursuant to Local Rule 3015-1(b), thereby giving notice of the election of the Expedited Fee Approval Procedure.

⁵ In most instances, the Expedited Fee amount excludes conversion of a case to another chapter.

- i. **Supplemental Fee Before Confirmation.** A supplemental fee arising before confirmation may be asserted by filing a timely Application for Approval of Chapter 13 Attorney Fees (“Application”) and may be conditionally approved for disbursement upon plan confirmation via the procedure set forth in paragraph 1 above. The Statement and Application shall contain sufficient information to determine if the supplemental fee charged is fair and reasonable.
 - ii. **Supplemental Fee After Confirmation.** Within a reasonable time after the completion of the additional services, the attorney shall file an amended Statement and Application that clearly indicate the fee agreed upon, the fee paid to date directly from the debtor(s) and the fee to be paid through the chapter 13 plan. The amended Statement and Application shall contain sufficient information to determine if the supplemental fee charged is fair and reasonable. Unless an objection to approval of the fee is filed within twenty (20) days of service of the amended Statement and Application or unless the Court orders otherwise, the supplemental fee shall be conditionally approved for disbursement subject to the terms of the confirmed plan and this Order. Any such Statement and Application must be accompanied by a certificate of service indicating timely service on the debtor(s) and the trustee.
- b. **Supplemental Fee Aggregating to More than \$1,000.00.** Within a reasonable time after the completion of the additional services, the attorney may request a supplemental fee exceeding \$1,000.00 over the amount charged under paragraph 1 by filing an Application and amended Statement, which must contain sufficient information to determine if the total

supplemental fee is fair and reasonable, and a proposed order. The Application and Statement must be accompanied by a certificate of service indicating timely service on the debtor(s) and the trustee. The attorney shall be entitled to the supplemental fee only after such fee is approved by order of the Court.⁶ Compensable services under this paragraph are limited to those rendered in the event of unforeseen circumstances.

3. **Alternative Procedure: Formal application for compensation.** In lieu of the Expedited Fee Approval Procedure set forth above, 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. A timely application may be filed on or after the fifteenth (15th) day after the filing of the case, the forty-fifth (45th) day, and every ninety (90) days thereafter unless the Court orders otherwise. 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.

4. **Form Plan.** To implement the changes set forth in this Order the form chapter 13 plan promulgated pursuant to SC LBR 3015-1 is amended, effective for all cases filed after January 1, 2008, by replacing paragraph 3 of the present form chapter 13 plan with the following language:

3. *Fees and expenses of the attorney for the debtor(s) shall be treated as follows:*

(a) _____ The attorney for the debtor(s) has received \$ _____ in fees and costs prior to the filing of this case and has agreed to an additional fee and cost reimbursement in the amount of \$ _____, which latter sum shall be paid under this plan. Additional fees may be sought by Application under the Expedited Fee Procedure.

⁶ An order approving the supplemental fee may be entered prior to the hearing on the fee application in the discretion of the judge.

(b) _____ The attorney for the debtor(s) has received a retainer and cost advance of \$ _____ prior to the filing of this case. The attorney has agreed to file fee applications for compensation and expenses in this case and will hold the retainer and cost advance in trust until fees and expense reimbursements are approved by the Court. For plan confirmation purposes only, the fees and expenses of counsel are estimated at \$ _____ or less.

Following confirmation of the plan and unless the Court orders otherwise, the chapter 13 trustee shall disburse \$500.00 to the attorney from the initial disbursement made by the chapter 13 trustee.¹ In addition to the initial disbursement by the chapter 13 trustee, the balance of the attorney's compensation as allowed under paragraphs (a) or (b) above and the terms of the Operating Order shall be paid, to the extent then due, with all funds remaining each month after payment to secured and domestic support creditors as set forth herein.

In instances where an attorney assumes representation in pending pro se cases and a plan is confirmed, a separate order may be entered by the Court, without further notice, which allows for the payment of a portion of the attorney's fees in advance of payments to other creditors.

Footnote 1 of the present form plan is amended, effective for all cases filed after January 1, 2008, by replacing footnote 1 of the present form plan with the following language:

The chapter 13 trustee shall not disburse more than the unpaid balance of the fee to be paid under the plan pursuant to (a), the balance of the fee previously applied for and authorized pursuant to (b), or the unpaid balance to be paid together with any supplemental fee then applied for and authorized under the terms of the Operating Order, as applicable.


A full copy of the revised chapter 13 plan, effective in all cases filed after January 1, 2008, shall be published on the Court's website.

5. **Duty to represent.** An attorney representing a debtor in a chapter 13 case is required to represent the debtor in all matters in this Court relating to the bankruptcy, except as provided by SC LBR 9010-1(d), unless the attorney is

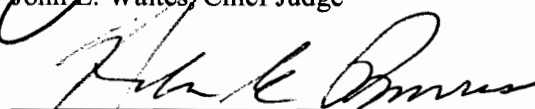
permitted to withdraw by order of the Court pursuant to SC LBR 9010-1(d) or is substituted pursuant to SC LBR 9010-1(e).

6. **Reasonable fee and review thereof.** The attorney for chapter 13 debtor(s) is entitled to a reasonable negotiated fee determined in accordance with applicable legal authority including 11 U.S.C. § 330. Pursuant to 11 U.S.C. §§ 105(a) and 329(b) and the Court's inherent authority to regulate litigants, the Court may require the return of excessive fees. Conditional approval of any fee is subject to the Court's further consideration of the fee and the right of a party in interest to object to or seek disgorgement of a fee that is otherwise unreasonable. The attorney bears the burden of proof to establish the reasonableness of any fee requested. For any case filed on or after January 1, 2008, any claim for attorney's fees, incurred as a result of representing debtor(s), filed by proof of claim shall be of no force and effect and is hereby deemed improperly and insufficiently filed. No additional action will be taken by the Court as a result of any such proof of claim.

AND IT IS SO ORDERED.



John E. Waites, Chief Judge



Helen Elizabeth Burris, Judge



David R. Duncan, Judge

Columbia, South Carolina
November 30, 2007

APPLICATION FOR APPROVAL OF CHAPTER 13 ATTORNEY FEES¹

I hereby request payment of attorney fees and costs as set forth below and represent to the court as follows:

1. This request for payment is expressly authorized by a conspicuous provision of a written fee agreement filed with the court and incorporated herein.
2. Pursuant to Operating Order 07-12, I hereby request payment of the following fees and expenses (only mark sections applicable to this request):
 - a. Expedited Fee Amount (paragraph 1)
\$ _____
 - b. Supplemental Fees Before Confirmation (paragraph 2(a)(i))
\$ _____
 - c. Supplemental Fees After Confirmation (paragraphs 2(a)(ii) or (2)(b))²
\$ _____
 - d. Alternative Procedure Fees (paragraph 3)
\$ _____
3. Fees and expenses set forth above total \$ _____, which includes all amounts charged through the date hereof.³ I have received \$ _____ in attorney fees and costs directly from the debtor. I request that the remaining amount of \$ _____, be paid through the Chapter 13 plan.
4. For all requests for Supplemental Fees or amounts claimed pursuant to the Alternative Procedure, include a detailed description of the services rendered, the time expended, and the amounts requested in this application (attach additional sheets and/or documentation if necessary).

Debtor's Attorney

¹ This is the recommended form for approval of fees beyond the expedited amount in Chapter 13 cases. File with the Disclosure of Compensation of Attorney for Debtor(s), Original or Amended, for approval of fees per Operating Order 07-12. It is not necessary to include herein any filing fees charged by the U.S. Bankruptcy Court for this case in any portion of this application.

² Supplemental fees that aggregate more than \$1000 must be approved by order of the Court.

³ Total amount should be the sum of 1(a-d) and all numbers should match those set forth in paragraph (1) of the Disclosure of Compensation of Attorney for Debtor(s), Original or Amended, filed herewith.