

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
2009 FEB 20 AM 8:42

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

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

AMENDED OPERATING ORDER¹

09-01

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 \$3,000.00² 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.³ 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 This Operating Order replaces and supersedes Operating Order 07-12 and was amended to reflect the renumbering of certain Local Rules and the amendment to the form chapter 13 plan made December 1, 2008.

² Per case, whether individual or joint.

³ 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”).⁴ 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.⁵ 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.⁶

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.

⁴ 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.

⁵ 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.

⁶ 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

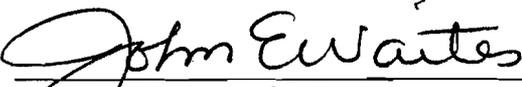
supplemental fee is fair and reasonable, and a proposed order. The Application and Statement must be accompanied by a certificate of service indicating timely service on the debtor(s) and the trustee. The attorney shall be entitled to the supplemental fee only after such fee is approved by order of the Court.⁷ 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.** Language has been included in the Form Plan, SC LBR 3015-1 (Exhibit A), to reflect the treatment of fees and expenses for the attorney for the debtor, which is to be read in conjunction with this Order.
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 9011-1(b), unless the attorney is permitted to withdraw by order of the Court pursuant to SC LBR 2091-1(a) or is substituted pursuant to SC LBR 2091-1(b).

⁷ An order approving the supplemental fee may be entered prior to the hearing on the fee application in the discretion of the judge.

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

Columbia, South Carolina
November 30, 2007
As amended February 20, 2009