

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

IN RE:

Order Regarding Attorney's Fees in
Chapter 13 Cases,

OPERATING ORDER

07-____

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 \$3000¹ 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 certain additional fees that 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. This Order is effective in all chapter 13 cases filed on or after (date) .

IT IS HEREBY ORDERED:

1. **Expedited Fee Approval Procedure.** Approval and payment of fees for an attorney representing a debtor(s) in a chapter 13 case may be accomplished without the filing of a fee application and a hearing when the attorney and debtor(s) agree in writing that the fee for representation will be a total of \$3000 or less for a non-business case and \$3500 or less for a business case (collectively,

¹ Per case, whether individual or joint.

the “Expedited Fee Amount”).² This amount includes all typical costs and expenses other than filing fees. 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 pursuant to Fed. R. Bankr. P. 2016(b), which clearly indicates fees agreed upon, fees paid to date and fees to be paid through the chapter 13 plan, and by the insertion of the appropriate amount due in the chapter 13 plan and service thereof.³ 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 or incorporated in the Attorney Fee Disclosure 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, or for other complicating factors not present in the typical chapter 13 case. If an agreement for supplemental fees is made between the debtor(s) and attorney and total supplemental fees sought in the case do not exceed \$1000.00, such fees may be asserted via paragraphs (a) and (b) below. Requests for total supplemental compensation aggregating more than \$1000.00 in a case must be made by submitting a timely application according to paragraph

² 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.

³ 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.

(3), subject to the terms and conditions of this order, any fee agreement with the debtor(s), the Attorney Fee Disclosure Statement and applicable law.⁴

a. **Supplemental fees before confirmation.** Supplemental fees arising before confirmation may be asserted and conditionally approved for disbursement upon plan confirmation via the procedure set forth in (1) above. The Attorney Fee Disclosure Statement shall contain sufficient information to determine if the supplemental fee charged is fair and reasonable.

b. **Supplemental fees after confirmation.** At the time of the completion of the additional services, the attorney shall file an amended Attorney Fee Disclosure Statement that clearly indicates all fees agreed upon, fees paid to date directly from the debtor and fees to be paid through the chapter 13 plan. The amended Attorney Fee Disclosure Statement 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 Attorney Fee Disclosure Statement, the supplemental fee shall be conditionally approved for disbursement subject only to the terms of the confirmed plan and this Order. Any such amendment or supplementation must be accompanied by a certificate of service indicating timely service on the debtor(s) and the trustee.

3. **Alternative Procedure: Formal application for compensation.** In lieu of the Expedited Fee Approval Procedure set forth above, the attorney may utilize a formal application procedure for compensation pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2016(a) for actual services rendered and expenses incurred.⁵ A

⁴ An application for supplemental fees must comply with the requirements of Fed. R. Bankr. P. 2002. Further, applications filed pursuant to Rule 2002 may be set for a hearing.

⁵ The submission of time records along with the fee application is recommended. See In re Simmons, C/A No. 06-01566-JW, slip op. (Bankr. D.S.C. Mar. 2, 2007).

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 for compensation and proposed order shall clearly indicate all compensation for the attorney that has been approved in the debtor's case prior to the application. Attorneys electing this procedure shall estimate fees in the debtor's chapter 13 plan for confirmation purposes.

4. **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).
5. **Reasonable fee and review thereof.** For their services, attorneys are 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 right of a party in interest to object to or seek disgorgement of a fee that is otherwise unreasonable. The debtor's attorney bears the burden of proof to establish the reasonableness of any fees requested. For any case filed on or after _____(date)_____, any claim for debtor's attorney's fees 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
_____, 2007