

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

**DEBTOR'S ATTORNEY FEE IN CHAPTER 13 CASES
FILED IN THE UTICA DIVISION**

Administrative Order – 13-02

WHEREAS, a need exists to be certain that every chapter 13 debtor understands (1) his or her rights and responsibilities to the Court, to the Chapter 13 Trustee, and to the creditors of his or her bankruptcy estate, (2) the importance of honest and continual communication with his or her attorney to make the chapter 13 case successful, (3) the attorney fee and costs being charged for chapter 13 representation, and (4) the services to be provided in connection with the attorney fee and costs; and

WHEREAS, a need exists to be certain that every chapter 13 debtor's attorney understands what legal services he or she is expected to provide when a chapter 13 case is filed in the Utica Division of the United States Bankruptcy Court for the Northern District of New York; and

WHEREAS, the purpose of this Administrative Order is to set forth the procedures that will generally be followed by this Court with respect to the attorney fee and costs that will be routinely allowed without a fee application and supporting time records for an attorney representing a chapter 13 debtor in a case filed in the Utica Division; and

WHEREAS, on August 11, 2009, the Court entered Administrative Order 09-07 ("AO 09-07") titled "Debtor Counsel Fees in Chapter 13 Cases Filed in the Utica Division," setting a presumptively reasonable or flat fee (the "Flat Fee") of the lesser of \$3,700.00 or 50% of the amount to be funded through the chapter 13 plan, subject to a possible adjustment at 3 year intervals; and

WHEREAS, the Court now finds that it is appropriate to increase the Flat Fee.

NOW, after due deliberation, it is hereby,

ORDERED, as follows:

A chapter 13 debtor's attorney shall set forth the amount of the attorney fee to be charged for services rendered to the debtor both in the Rule 2016(b) Statement required by Federal Rule of Bankruptcy Procedure 2016(b) (the "Rule 2016(b) Statement") and in the chapter 13 plan filed with the Court. The attorney fee requested, when it falls within the range permitted by this Administrative Order, shall constitute the Flat Fee for all services rendered and to be rendered in connection with the case in accordance with this Court's *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, unless otherwise specified in the Rule 2016(b) Statement. Pursuant to Administrative Order 09-08 titled "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys for the Albany and Utica Divisions," entered on October 8, 2009, the attorney shall also file a copy of the executed *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*. Except as otherwise ordered by the Court, after a confirmation hearing held on notice to all parties in interest, the Flat Fee, whether paid through the chapter 13

plan or directly by the debtor, shall not be more than \$4,200.00, nor more than 50% of the amount to be funded through the chapter 13 plan.

The Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys form shall apply regardless of whether the debtor and the debtor's attorney select the Flat Fee option or an hourly fee option in a given case. In a case where the attorney elects to represent the debtor on an hourly fee basis, the attorney shall request approval by filing and serving an appropriate Application for Compensation pursuant to 11 U.S.C. §§ 330 and/or 331. Such an application must be accompanied by a narrative of services rendered, contemporaneous time records, and a summary of any attorney fee previously paid to the attorney of record to date in the case.

The Flat Fee does not include costs for the statutory filing fee or any fee charged by a third-party provider for credit counseling and the education course required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Flat Fee does, however, include ordinary and reasonable costs incurred in connection with notice and service of routine matters for which representation is required during the case.

Establishment of the Flat Fee does not inalterably determine the reasonableness of the attorney fee a chapter 13 debtor's attorney may charge. The use of the Flat Fee simply obviates the need for an attorney, in most cases, to keep contemporaneous time records, file a fee application, and attend a hearing of the fee application when requesting an attorney fee equal to or below the Flat Fee. However, use of the Flat Fee does not deny the debtor, Chapter 13 Trustee, or any other party in interest the right to object to the Flat Fee in a particular case. In such a case, the objecting party will have the burden of rebutting the reasonableness of the Flat Fee. Thus, a chapter 13 debtor's attorney should maintain supporting, contemporaneous time records in each case.

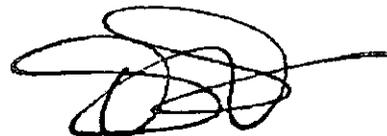
The Flat Fee established by this Administrative Order shall be deemed allowed as an administrative expense without application or further order of the Court, to be paid under the terms of a confirmed plan. As such, the chapter 13 debtor's attorney is entitled to a prorated portion of the trust funds held by the Chapter 13 Trustee in an amount not to exceed \$2,500.00 in the event the debtor's case is dismissed or converted prior to confirmation.

The Flat Fee under the terms of this Administrative Order may be readjusted utilizing the methodology set forth in 11 U.S.C. § 104(b) for cases filed on or after the effective date of adjustment under this section.

This Administrative Order shall be effective for all chapter 13 cases filed with the Utica Division on or after April 1, 2013.

This Administrative Order supersedes AO 09-07.

Dated: March 28, 2013



Hon. Diane Davis
United States Bankruptcy Judge