

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

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

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Amended 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 Amended 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 presumptive 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 and to clarify certain requirements as provided herein.

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 neither 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, accurate and 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 established by this Administrative Order shall be deemed allowed without application or further order of the Court, to be paid as an 11 U.S.C. § 503(b)(2) administrative expense under the terms of a confirmed plan.

Establishment of the Flat Fee does not inalterably determine the reasonableness of the attorney fee requested. As a practical matter, the use of the Flat Fee simply obviates the need for an attorney in Flat Fee cases to keep detailed and contemporaneous time records, file an application, and attend a hearing of the application when requesting an attorney fee equal to or below the Flat Fee. However, use of the Flat Fee does not deny the Court, debtor, Chapter 13 Trustee, or any other party in interest the right to object to the reasonableness of the Flat Fee in a particular case. In such cases, the burden to support the challenged fee request still remains on the attorney.

To obtain a partial Flat Fee award in an amount not to exceed \$2,500.00 from the funds held by the Chapter 13 Trustee that are otherwise subject to return to the debtor pursuant to 11 U.S.C. § 1326(a)(2) because the case has been dismissed or converted prior to confirmation, the attorney must file an application on 21-day notice and serve the debtor, the Chapter 13 trustee, and any other party otherwise entitled to a share of those funds pursuant to an order of the Court. Such application must be heard and adjudicated prior to the dismissal or conversion of the case to avoid jurisdictional limitations.

The Flat Fee includes ordinary and reasonable costs incurred in connection with notice and service of routine matters for which representation is required during 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 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 Amended Administrative Order shall be retroactively effective for all chapter 13 cases filed with the Utica Division on or after April 1, 2013.

This Amended Administrative Order supersedes AO 09-07.

Dated: April 24, 2013



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Hon. Diane Davis  
United States Bankruptcy Judge