

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

**ADMINISTRATIVE ORDER 19-01
DEBTOR'S ATTORNEY'S FEE IN CHAPTER 13 CASES
FILED IN THE ALBANY AND UTICA DIVISIONS**

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 creditors of the 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's fee and costs being charged for Chapter 13 representation, and (4) the services to be provided by the attorney in connection with the attorney's fee and costs; and

WHEREAS, a need exists to be certain that the debtor's attorney understands what legal services are expected to be provided when a Chapter 13 case is filed in the Albany or Utica Divisions 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 options available to the debtor's attorney and the procedures that will generally be followed by the Court in the Albany and Utica Divisions with respect to the attorney's 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 either the Albany or Utica Division.

NOW, therefore, it is hereby

ORDERED, as follows:

In a Chapter 13 case, based on the complexity of the case and the prevailing market rate, the debtor's attorney shall determine at the time of retention the entire amount of the fee to be paid by or on behalf of the debtor (the "Flat Fee"). The Flat Fee shall be inclusive of the attorney's fee and costs, other than those for bankruptcy court clerk's office filing fees, county recording fees, and/or service costs not to exceed \$1.00 per regular mail notice, \$5.00 per certified mail, and actual costs of overnight delivery service. If an attorney seeks costs, the Notice of Hearing and Motion both must specify the amount of costs and the attorney must file a certificate of service within three days of filing of the Motion.

If the Flat Fee option is chosen, the Chapter 13 plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case, including any amount paid pre-petition as a retainer and the amount to be paid through the Chapter 13 plan. The debtor's attorney shall file an executed *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* in each case.

Except as ordered otherwise by the Court, after a hearing held on notice to all parties in interest, the Flat Fee, whether paid pre-petition by the debtor and/or post-petition

through the Chapter 13 plan, must be reasonable pursuant to 11 U.S.C. § 329(b) and cannot be more than 50% of the amount to be funded through the Chapter 13 plan.


Alternatively, the debtor's attorney may elect to represent the debtor on an hourly fee basis. If the debtor's attorney is representing the debtor on an hourly fee basis rather than the Flat Fee option, no fee shall be awarded absent entry of a separate order. In those instances, the debtor's 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 shall be accompanied by a narrative of services rendered and contemporaneous time records. The *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* shall apply regardless of whether the debtor and the debtor's attorney select the Flat Fee or an hourly fee option and shall be filed in each case.

Nothing contained herein is meant to limit the right of the Court, the debtor, the Chapter 13 trustee, or any other party in interest to object to the reasonableness of the fee charged or method of payment sought by the debtor's attorney. In such cases, the burden to support the challenged fee request with contemporaneous time records remains on the debtor's attorney.

This Administrative Order shall be effective with respect to all chapter 13 cases filed in the Albany or Utica Divisions on or after June 15, 2019.


This Administrative Order supersedes Administrative Orders 16-02 and 16-03.

Dated: June 3, 2019
Albany, New York



Robert E. Littlefield, Jr.
United States Bankruptcy Judge

Dated: June 3, 2019
Albany, New York



Diane Davis
United States Bankruptcy Judge

**United States Bankruptcy Court for the Northern District of New York
Albany and Utica Divisions**

**RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND THEIR
ATTORNEYS**

It is important for Chapter 13 debtors to understand their rights and responsibilities. It is also important that the debtors know that communicating with their attorney(s) is essential to successfully completing their plan. Debtors should also know that they may expect certain services to be performed by their attorney.

In order to assure that debtors and their attorneys understand their respective rights and responsibilities in the bankruptcy process, the following guidelines approved by the Court are hereby agreed to by the debtors and their attorneys **unless the Court orders otherwise**. Nothing in this Rights and Responsibilities Agreement shall be construed to excuse an attorney from any ethical duties or responsibilities under Federal Rule of Bankruptcy Procedure 9011 or applicable non-bankruptcy law.

BEFORE THE CASE IS FILED

The debtor agrees to:

1. Provide the attorney with accurate financial information and timely provide all requested documentation.
2. Discuss with the attorney the debtor's objectives in filing the case.

The attorney agrees to:

1. Meet with the debtor to review the debtor's debts, assets, liabilities, income, and expenses.
2. Counsel the debtor regarding filing a case under the appropriate chapter of the Bankruptcy Code, outlining the procedures with the debtor, and answering the debtor's questions.
3. Explain what payments will be made directly by the debtor and what payments will be made through the debtor's Chapter 13 plan, with particular attention to mortgage and vehicle loan payments, as well as any other claims on which interest accrues.
4. Explain to the debtor how, when, and where to make the Chapter 13 plan payments.
5. Explain to the debtor how the attorney's fees are paid.
6. Provide to the debtor an executed copy of this Rights and Responsibilities of Chapter 13 Debtors and their Attorneys.
7. Explain to the debtor that the first plan payment must be made to the Trustee within 30 days of the date the petition is filed.
8. Advise the debtor of the requirement to attend the 341 Meeting of Creditors and all adjourned meetings.
9. Advise the debtor of the necessity of maintaining liability and hazard insurance on all real property as well as liability, collision, and comprehensive insurance on all vehicles.
10. Timely prepare and file the debtor's petition, plan, statements, and schedules.

AFTER THE CASE IS FILED

The debtor agrees to:

1. Keep the Court, Trustee, and attorney informed of the debtor's current address and telephone number.
2. Inform the attorney of any wage garnishments or attachments of assets which occur or continue after the filing of the case.
3. Contact the attorney promptly if the debtor loses his/her job or has other financial problems.
4. Let the attorney know if the debtor is sued during the case or files a lawsuit.
5. Inform the attorney if any tax refunds the debtor is entitled to are seized or not returned to the debtor by the IRS or Franchise Tax Board.
6. Contact the attorney before buying, selling or refinancing any property and before entering into any loan agreements to find out what approvals are required.

The attorney agrees to:

1. Appear at the 341 Meeting of Creditors with the debtor and all adjourned meetings.
2. Respond to objections to plan confirmation, and where necessary, prepare an amended plan.
3. Prepare, file, and serve necessary modifications to the plan which may include suspending, lowering, or increasing plan payments.
4. Prepare, file, and serve necessary amended statements and schedules, in accordance with information provided by the debtor.
5. Prepare, file, and serve such motions as are needed during the case including, but not limited to, motions to avoid liens, sell property, approve settlements, approve new debt, etc.
6. Timely review all proofs of claim.
7. Timely object to improper or invalid proofs of claims based upon information and documentation provided by the debtor if such objection is necessary and beneficial to the debtor or to the estate.
8. Represent the debtor in connection with motions for relief from stay and for dismissal or conversion of the case.
9. Communicate with the debtor to discuss pending issues or matters of concern.
10. Provide such other legal services as are necessary for the proper administration of the present case before the Bankruptcy Court, which may include representation of the debtor in adversary proceedings.

Case Legal Fees: Legal fees to be paid to the attorney shall be a "flat fee" for all services to be rendered in this case except for loss mitigation as provided below and/or adversary proceedings. **Court approval for the "flat fee" in the total sum of \$ _____ will be requested by the attorney. The attorney has received \$ _____ prepetition (the initial retainer) and requests payment of the balance of \$ _____ through the Chapter 13 plan.** If additional fees for services are sought and approved in this case pursuant to Local Bankruptcy Rule 2016-2(d), all such fees shall be paid through the plan and not by the debtor directly unless ordered otherwise. All reimbursable costs shall be paid through the plan and not directly by the debtor unless ordered otherwise.

Alternatively, if the attorney elects to represent the debtor on an hourly fee basis rather than the Flat Fee option, no fee shall be awarded absent entry of a separate order. In those instances,

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 shall be accompanied by a narrative of services rendered and contemporaneous time records.

Loss Mitigation Program Fees: The attorney may apply for and the Court may award reasonable additional fees for services provided in the Court's Loss Mitigation Program. For additional fees in the Loss Mitigation Program, the Court may award fees up to \$1,000 without notice to any party. A request for attorney fees that are in excess of \$1,000 shall be on notice pursuant to the default procedure of LBR 9013-3(c)(3). The fee request shall be based on an hourly rate consistent with the agreement between the debtor and attorney. Unless ordered otherwise, the attorney's fee for loss mitigation shall be paid through the plan and not directly by the debtor.

Fees Outside the Loss Mitigation Program: In relation to loss mitigation conducted outside the Loss Mitigation Program, the attorney may request an additional fee, not to exceed \$500, in the Notice of Hearing and Motion to Approve a Loan Modification in the Albany Division or Motion to Authorize Debtor to Enter into Loss Mitigation in the Utica Division. Unless ordered otherwise, the attorney's fee for the motion shall be paid through the plan and not directly by the debtor.

If the debtor disputes the attorney's fee requested by the attorney, the debtor's attorney must file a motion on notice to the debtor and the Trustee regardless of the amount sought.

The attorney may move to withdraw pursuant to Local Bankruptcy Rule 2091-1 and the client may discharge the attorney at any time.

Dated:

Debtor

Dated:

Debtor

Dated:

Attorney for Debtor(s)