

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

ADMINISTRATIVE ORDER 22-03

**FEEES FOR DEBTOR'S COUNSEL IN CHAPTER 13 CASES
FILED IN THE NORTHERN DISTRICT OF NEW YORK**

The Court has determined that adoption of the procedures and guidelines specified in this order will facilitate and provide for uniformity in the consideration of compensation to counsel of Chapter 13 Debtors across the district. This order sets forth options available to Debtor's attorney and the procedures that will generally be followed by the Court with respect to attorney's fees and costs that will be allowed without a fee application and supporting time records.

NOW, therefore, it is hereby **ORDERED** as follows:

BASE LEGAL SERVICES

Debtor's Attorney is required to provide the following legal services to the Debtor,¹ without exception, inclusive within the Attorney's Base Legal Fee ("Base Fee"):

1. Participation in consultations, meetings, and/or communications with Debtor that take place before the filing of the petition;
2. Preparation, filing, and service of the voluntary petition, schedules, statements, affirmations, Chapter 13 plan ("Plan"), wage order(s) if applicable, and any other documents required to be filed or executed upon the commencement of a Chapter 13 case;
3. Preparation, filing, and service of any amendments to documents, of the type enumerated in ¶ 2, to the extent that doing so is required for entry of a Confirmation Order;
4. Collect all required financial documents and provide them to the Chapter 13 Standing Trustee ("Trustee");
5. Appearance at the § 341 meeting of creditors with Debtor and all adjourned meetings;
6. Appearance, if required, at the confirmation hearing and all adjourned confirmation hearings;
7. Drafting, filing, and service of responses or opposition to any objection(s) to confirmation where necessary and appropriate;

¹ In a joint case, any reference to "Debtor" shall mean "Debtors."

8. Drafting, filing, and service of any motion that is either required for entry of a Confirmation Order or as necessary to resolve any outstanding objection(s) to confirmation of the Plan;
9. Timely review all filed proofs of claim;
10. Review and confirm perfection of liens or encumbrances against Debtor's real property, as well as providing the same to the Trustee where necessary;
11. Representation of Debtor in connection with Motion(s) to Avoid Lien(s) and/or Motion(s) to Strip Wholly Unsecured Mortgage(s);
12. Representation of Debtor in connection with pre-confirmation and two post-confirmation Motion(s) to Dismiss and/or Convert the case;
13. Representation of Debtor in connection with objections to claim(s), but only to the extent that the objection(s) is granted either on default or following resolution of a service-related issue only;
14. Telephone calls and written correspondence with the Debtor, Chapter 13 trustee, and creditors regarding the case;
15. Representation of Debtor in connection with Motion(s) to Deem Mortgage Current where necessary;
16. Preparation and filing of certifications required to obtain a discharge after plan payments are completed; and
17. Attend any discharge hearing scheduled and address all objections to discharge filed in connection with the hearing, if any.

Debtor's attorney may be relieved of representation of Debtor only by order of the Court after notice and a hearing or a substitution of counsel approved by the Court.

PAYMENT OF THE BASE FEE

In consideration for rendering the services listed above in ¶¶ 1 – 17, Debtor's attorney will be entitled to payment of the "Base Fee" upon confirmation of a Debtor's Plan. The amount of the Base Fee shall be based upon a "Flat Fee." Any sums that a Debtor has paid to their attorney prepetition towards the Base Fee shall be deducted from the total Base Fee payable to the attorney. Unless otherwise ordered by the Court, the Debtor's Base Fee shall be paid by the Trustee to the attorney from Debtor's Plan payments.

It is anticipated that the Base Fee shall cover, at a minimum, all services that would reasonably be expected in order to obtain confirmation of a Plan, and ultimately, a discharge. The Base Fee will be determined by Debtor's counsel at the time of retention based upon the complexity of the Debtor's case. A Flat Fee from \$3,500 to \$6,500, taking into account factors such as whether a Debtor is engaged in business under 11 U.S.C. § 1304, is a consumer debtor, is a W-2 wage earner

or is self-employed, has secured debt, owns real property encumbered by a mortgage in arrears, owes taxes to a state or the Internal Revenue Service, requires the automatic stay to be extended or imposed, and/or requires lien(s) to be avoided, stripped, or modified, shall be deemed presumptively reasonable under 11 U.S.C. § 330(a) and eliminates the necessity for a hearing or filing a fee application. The Plan and Statement filed per Fed. R. Bankr. P. 2016(b) will be treated as the application required by Fed. R. Bankr. P. 2016(a), and the order confirming the Plan will be treated as an order approving compensation.

ADDITIONAL LEGAL SERVICES

In some cases, the Debtor may require legal services after the Plan is confirmed and prior to Plan completion and issuance of a discharge. Debtor's attorney is required to provide the following legal services to Debtor, without exception, but the cost of each service will result in an additional legal fee ("Additional Fee"). Unless otherwise ordered by the Court, the Additional Fee shall be paid to Debtor's attorney by the Trustee through Debtor's ongoing Plan payments:

1. Motion to Modify a Confirmed Plan;
2. Motion to Reconsider Dismissal of Chapter 13 case;
3. Motion to Approve Debtor's Incurring New Debt, following Trustee's denial of Debtor's initial request;
4. Motion to Modify and/or Disallow proof(s) of claim(s), where an objection is interposed and is not based upon Attorney's service of process;
5. Defense of Motion for Relief from the Automatic Stay;
6. Defense of third and any subsequent post-confirmation Motion to Dismiss and/or Convert the case;
7. Motion to Purchase, Sell, or Refinance Real or Personal Property;
8. Motion to Retain Income Tax Refunds, following Trustee's denial of Debtor's initial request;
9. Motion for a Hardship Discharge; and
10. Any other motion that is not specifically covered by the scope of Base Legal Services.

PAYMENT OF ATTORNEY FEES FOR ADDITIONAL LEGAL SERVICES

Debtor's attorney will be entitled to payment of the Additional Fee after rendering any of the services listed above in ¶¶ 1 – 10 ("Additional Legal Services"). The amount of the Additional Fee incurred for each task shall be based upon a "presumed-reasonable fee" of between \$350 and \$650 depending on the nature and complexity of the motion filed or opposed and services rendered except that for a Motion to Approve the Sale of Real Property a fee of up to \$750 shall be presumed reasonable.

If a novel or complex motion not routinely seen in Chapter 13 practice is filed or opposed, Debtor's attorney may choose to bill at an hourly rate and file a fee application on notice supported by time records in compliance with Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules.

Debtor's attorney may include a request for an Additional Fee in an affirmative or responsive pleading, and the order resolving the matter may include disposition of the matter and the approved Additional Fee. The fee request shall include (1) a description of the services rendered, (2) the Additional Fee and costs sought, (3) the Base Fee approved in the Confirmation Order or disclosed in the Fed. R. Bankr. P. 2016(b) Statement, if the case is not confirmed, and any Additional Fee(s) awarded, (4) fees paid to the attorney to date, and (5) a statement by the attorney as to whether an award of the Additional Fee will or will not result in the total compensation being paid to Debtor's attorney being more than 50% of the amount to be funded through the Debtor's Plan.

Any sums that a Debtor has paid to their Attorney prepetition towards the Base Fee are not deducted from the total Additional Fee(s) payable to the attorney. Unless otherwise ordered by the Court, any Additional Fee(s) incurred and awarded following an attorney's rendering Additional Legal Services shall be paid by the Trustee from Debtor's Plan payments. If the award of an Additional Fee would render the Plan infeasible, reduce the amount required to be paid to unsecured creditors to an amount less than that required by 11 U.S.C. §§ 1325(a)(4) and 1325(b), or reduce the dividend noticed to unsecured creditors, Debtor's Plan payment must be increased to pay the Additional Fee through the Plan.

COSTS

The Base Fee and Additional Fee shall be inclusive of costs except for Clerk's Office filing fees, county recording fees, actual and reasonable fees charged by third-party providers for lien searches, credit counseling, and debtor education courses, and actual and necessary costs of service by regular mail, certified mail, or overnight delivery service.

HOURLY FEE STRUCTURE

Alternatively, at the time of retention, Debtor's attorney may elect to represent a Debtor on an hourly fee basis throughout the case. If the Attorney is representing the Debtor on an hourly fee basis rather than the Base Fee and Additional Fees option, no fees shall be awarded absent entry of a separate order. In those cases, the attorney shall seek approval of fees by filing and serving an appropriate Application for Compensation on notice supported by time records pursuant to 11 U.S.C. § § 330 and/or 331.

CASE FEE

Except as otherwise ordered by the Court, after a hearing held on notice, the total compensation for Debtor's attorney whether computed using the Base Fee and Additional Fee(s) or an hourly fee basis shall not be more than 50% of the amount to be funded through the Plan.

NOTWITHSTANDING THE PROVISIONS OF THIS ORDER, NOTHING CONTAINED HEREIN IS MEANT TO PRECLUDE THE COURT, CHAPTER 13 TRUSTEE, UNITED STATES TRUSTEE, DEBTOR, OR ANY INTERESTED PARTY FROM OBJECTING IN WHOLE OR IN PART TO THE REASONABLENESS OF THE FEE REQUESTED OR METHOD OF PAYMENT SOUGHT BY DEBTOR'S ATTORNEY.

This order shall be effective with respect to all Chapter 13 cases filed in the Northern District of New York on or after April 18, 2022.

This order supersedes Administrative Order 19-01 for cases filed on or after April 18, 2022.

Dated: April 7th, 2022



Diane Davis
Chief Bankruptcy Judge