AMERICAN BANKRUPTCY INSTITUTE

2019 Winter Leadership Conference

CONCURRENT SESSION

Consumer Attorney Fees: Everything You Always Wanted to Know — The Good, the Bad and the Ugly (Ethics)

Hosted by the Consumer Bankruptcy and Ethics & Professional Compensation Committees

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Consumer Attorney Fees
Everything You Always Wanted to Know-The Good, the Bad & the Ugly

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The Judge's Perspective - Attorney fees:

If the attorney has agreed to be paid under Rights and Responsibilities Agreement (RARA), the fee is presumed okay if it is equal to or less than the amount allowed for RARA for the case.

(Not all jurisdictions require a formal agreement for representation.)

If the attorney submits a supplemental fee application that fits within the amounts specified by the Court Manual, that is presumptively reasonable.

When the attorney submits a fee application with support for the time used to render services we look at:

Reasonableness of rates and time expended

330(a)(3)(C) "whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title"

330(a)(4)(B) " … the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with bankruptcy case…."

Recent attorney fee cases of interest are as follows:

Debtor's attorney are generally compensated under RARA or through fee application but not both. A debtor's attorney employed under the RARA may not bill time covered by RARA at an hourly rate.

In re Eliapo, 298 B.R. 392 , (9th Cir. BAP 2003), *Affirmed in Part, Reversed in Part and Remanded*

If an attorney wants to bill for time, that attorney must present billing records going back to the inception of the case. This does not apply to work post confirmation or to work not specifically covered by RARA.

In re Eliapo 468 F.3d 592 , (9th Cir. 2006) On appeal the Court held, "We hold that the bankruptcy court's use of the presumptive no-look guideline fees for routine Chapter 13 cases was consistent with 11 U.S.C. § 330, that the court's criterion for awarding additional fees beyond the presumptive no-look fees was proper under § 330, and that the court's failure to hold a hearing on the application for additional fees violated Bankruptcy Rule 2017(b). We therefore affirm in part and reverse in part."

In re Bingham, 2018 WL 2059604, (Bankr. N.D. Cal. May 2018) (Subject to specific disclosure and guidelines, confirmed plan can permit debtor and attorney to agree that approved attorney fees not paid through the plan will be excepted from discharge and paid by debtor after completion of payment to other creditors.)

In re Jaworski, 2018 WL 6287969, (Bankr. D. Minn. Nov 2018) (Absent plan provision to the contrary, attorney fees are priority claim in a chapter 13 case and must be paid through the plan before completion of payments under the plan or else unpaid fees will be discharged.)

In re Brosio, 505 B.R. 903 (9th Cir. BAP 2014) where creditor amended a proof of claim to delete a charge for attorney fees for preparing the claim, the debtor is not the prevailing party and is not entitled to attorney fees for objecting to the proof of claim.

Alvarez v. Bayview Loan Servicing, LLC (In re Alvarez)(BAP 9th Cir., 2018) (unpublished)(BAP affirmed the bankruptcy court denial of attorney fees to debtor who brought a motion under BRP 3002.1. The case highlights an area that is developing for litigation with creditors)

The Creditor's Perspective:

In Re Wiedau's, Inc., 78 B.R. 904 (Bankr. S.D. Ill. 1987)-see attached

Case 18-35219 Perry and Lashuranda Shotlow
Order Sustaining Chapter 13 Trustee's Objection to the Notice of Post-Petition Mortgage Fees, Expenses, and Charges-see attached

The Trustee's Perspective:

Some jurisdictions require creditors, as well as debtors, to be notified when additional fees are sought. e.g., S.D. Ohio Local Rule 2016-1(b)(3)(B), requires service of the fee application upon the debtor, U.S. Trustee, Ch. 13 Trustee, and all creditors and parties in interest if the fee exceeds $1000.

In my role as Trustee, I review all debtor attorney fee applications. Our Judges review post petition fee applications as well and have scheduled sua sponte hearings when they have a question.

The Debtor's Perspective:

Attorney fees in Chapter 13 cases vary significant by state and district. In addition, in districts with multiple Trustees there can be additional standards and requirements that vary by Trustee. For a new or inexperienced attorney understanding how to get paid can be unclear and a bit of a mystery. This no-doubt deters some otherwise very skilled attorneys from venturing into this area of law.

Most courts have a local rule, order, or guidelines to establish a "presumptively reasonable" fee e.g., W.D. Va. Standing Order No. 15.1, establishes a $4,000 fees for "routine, expected services in a Chapter 13 case, " and provides a menu of fees for additional services that will be allowed without the need for contemporaneous time records; E.D. Va. Local Rule 2016-1(C) provides for a "No Look Fee, " currently set at $5,296.

Post-confirmation work can often be more time consuming that pre-petition work and local rules and practice often make getting paid difficult and complicated.

Most Chapter 13 attorney fees are paid entirely through the Chapter 13 plan by the Chapter 13 Trustee. Therefore, the timing of payments to the attorney is important to Debtor's counsel. Courts are divided as to whether Debtor's counsel can be paid prior to secured creditors. If payments are made concurrently with payments to secured creditors debtor's counsel is often not paid for years. The S.D. of Indiana recently addressed this issue and provided an overview of the three general approaches taken by Bankruptcy Courts. The court found that prioritizing payment of attorneys is permitted by the Code. The court also recognized there is a practical reason for paying attorney fees first: "If attorneys are not fairly and promptly paid for their services there is a substantial risk that many of the bankruptcy bar, which is comprised of a number of experienced attorneys, will not continue to practice in the bankruptcy arena. Such a result could be disastrous for debtors and the Court. . . . Chapter 13's are no longer a simple proceeding and are rife with pitfalls for unwary debtors. An experienced bankruptcy bar is essential to the operation of a smooth and fair bankruptcy process." *Credit Acceptance Corp. v. Thompson*, 19-1802 (S.D. Ind. October 2, 2019) citing I*n re Muhammad,* Case No. 05-33234-FJO-13, doc. 55 at 8 (Bankr. S.D. Ind. July 25, 2006).

The ABI Commission on Consumer Bankruptcy's report provides good insight into the dilemmas faces by Chapter 13 consumer attorneys and sets forth recommendations that would potentially help standardize attorney fees and remove some of the "mystery" behind getting paid.

The Commission's recommendation should not be misinterpreted as indifference to the importance of addressing unbundling issues. The Commission recommends that every jurisdiction have a local rule that provides certainty to attorneys about what services can be unbundled and the procedures for unbundling. The local rulemaking process allows the professional community to come together, consider local conditions and state rules of professional responsibility, then implement appropriate client protections without unduly blocking access to the bankruptcy system and harming the persons they are meant to protect.

§ 3.03 Presumptively Reasonable Attorney's Fees in Chapter 13s

(a) In chapter 13 cases, courts should adopt presumptively reasonable flat fees that cover typical attorney work until confirmation.

(b) Courts should adopt an "a la carte" fee structure for work performed after confirmation.

(c) Courts should consider consumer bankruptcy specialist certification as a factor in setting presumptively reasonable fees.

(d) Courts should review presumptively reasonable fees on a regular basis to determine whether they are promoting the goals of efficiency, a qualified bar, the diligent practice of law, and fairness to debtors.

Background. Attorneys must disclose the amounts they receive as compensation for a bankruptcy case, and attorney compensation is subject to court oversight. Section 329 and Federal Rule of Bankruptcy Procedure 2016(b) require attorneys to disclose all compensation received in the year prior to filing a bankruptcy case and the total compensation the debtor has promised to pay. The court can disallow prepetition compensation to the extent it exceeds the reasonable value of the services. Under section 330(a)(4)(B), the court can allow reasonable postpetition compensation to the debtor's lawyer in chapter 13 cases.[22] Rule 2016(a) directs the attorney seeking such compensation "to file an application setting forth a detailed statement of (1) the services rendered, time expended, expenses incurred, and (2) the amounts requested."

With chapter 13 cases being filed at rates of 300,000 to more than 400,000 annually,[23] a detailed scrutiny of the "services rendered, time expended, and expenses incurred" in each and every case is not realistic. Consequently, local rules or norms have largely replaced individual review of fee applications by using presumptively reasonable fees, often called "no look" fees. If the attorney requests payment at or below the presumptive amount, the bankruptcy court generally approves the request without a hearing.

22 The Supreme Court has ruled that in chapter 7, the Bankruptcy Code does not permit postpetition compensation from estate assets for the debtor's lawyer. *See* Lamie v. U.S. Trustee, 540 U.S. 526 (2004). The consequences of the *Lamie* decision and the Commission's recommendations regarding payment of the attorney's fees in a chapter 7 are discussed at § 3.01 Chapter 7 Attorney's Fees.

23 *See* Administrative Office of the U.S. Courts, Just the Facts: Consumer Bankruptcy Filings, 2006-2017 (Mar. 8, 2018), www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017 (last visited Jan. 21, 2019).

There are many advantages to this system. Presumptively reasonable fees carry benefits for the court, chapter 13 trustees, and debtors and their counsel. Most obviously, presumptively reasonable fees greatly reduce the time and cost that bankruptcy courts and chapter 13 trustees need to expend in reviewing fee applications. Attorneys can provide debtors an accurate estimate of the amount necessary for their legal representation, and debtors' counsel can represent their clients without the necessity of keeping track of their time. Bankruptcy practice often involves multiple short communications along with amendments to schedules and hearings that are brief compared to a nonbankruptcy trial practice. More efficient operations allow debtors' counsel to take time that would otherwise go to tedious and pointless recordkeeping and devote it to client representation. When provided by competent and zealous counsel, presumptively reasonable fees also allow the pooling of risks for both debtor and debtors' attorneys. For example, appeals that would never be in any individual debtor's pecuniary interest can and are brought by attorneys for whom the benefits of a successful appeal will inure throughout a large segment of their clients.

There are, however, disadvantages to the presumptively reasonable fee system. While most debtors' attorneys are diligent and represent their clients well, the flat-fee system provides an incentive to do the minimum amount of work and service for their clients and so maximize the return on this work. Also, because everyone pays the same presumptively reasonable fee, clients who have largely uncomplicated cases — for example, debtors with complete financial records and few claims who timely make all of their plan payments — subsidize those whose financial situations are more complex and who fail to make timely payments. Finally, a debtor in a jurisdiction with a total flat-fee system — one in which there is one flat fee for representation of the debtor from filing to discharge — may find it difficult to substitute attorneys. The "no look" fee is paid to the initial attorney, and only the remainder of the fee may be available for a subsequent attorney. As a result, many substitute attorneys in chapter 13 have an incentive to allow that case to be dismissed so that they are able to claim a full attorney's fee in the new case.

A private study done in 2018 for the National Association of Consumer Bankruptcy Attorneys and provided to the Commission found substantial variation in presumptively reasonable fees in chapter 13 cases.[24] Seventy-three percent of judicial districts were found to have some sort of presumptively reasonably fee structure, meaning a quarter of judicial districts did not. Of the districts with a fee structure, 41% of the districts provided a presumptively reasonable fee only for the work done through confirmation, with procedures for the attorneys to apply for compensation for postconfirmation work. Two judicial districts offer attorneys the option of charging a presumptively reasonable fee for work through confirmation or for the entire case. The remaining districts — 56% of the districts with a fee structure — specify a presumptively reasonable fee for all work done in the case. The study also found variation in how often the local court reviewed the presumptively reasonable fee, with one district having conducted no review of its presumptively reasonable fee in nine years.

24 The study's finding of variation in local practices on presumptively reasonable fees is largely consistent with the findings in two earlier, publicly available studies. *See* U.S. Gov't Accountability Office, Bankruptcy Reform: Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 24-27, 46 tbl.6 (2008); Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 Am. Bankr. Inst. L. Rev. 17, 110-19 (2012).

Recommendation — Presumptively Reasonable Fees. The Commission believes that the benefits of presumptively reasonable fees outweigh the costs. Therefore, the Commission recommends that all judicial districts adopt a presumptively reasonable fee. Judicial districts should do so through a transparent process, such as local rulemaking.

The Commission recommends that the presumptively reasonable fee should be for work done through confirmation only. After confirmation, the courts should have a standard "a la carte" fee structure for work commonly done after confirmation, with presumptively reasonable fees for categories of postconfirmation work. Having a flat, presumptively reasonable fee for preconfirmation work and then presumptively reasonable "a la carte" fees for postconfirmation work best balances the interests of the system in administrative feasibility and the interests of debtors.

A presumptively reasonable fee through confirmation recognizes that all debtors require certain preconfirmation work in a chapter 13 case, but postconfirmation work is highly variable. Prior to confirmation, all debtors must provide the same basic information, file the required documents, attend a 341 meeting, and perform other necessary actions. Postconfirmation, some clients can finish their cases with little additional involvement of counsel. Others require substantial additional assistance to defend against motions to dismiss and for relief from the automatic stay, and to propose plan modifications.

Allowing presumptively approved fees for specific categories of work performed after confirmation reduces costs for debtors in uncomplicated cases and appropriately puts the costs on debtors who need extra help. Further, if the debtor hires new counsel, this model compensates the attorneys who actually perform the postconfirmation work.

The bankruptcy court should have a procedure for approval of applications for presumptively reasonable postconfirmation fees. The requesting attorney should send notice of an application for postconfirmation fees and expenses to at least each debtor and the trustee. Each notice should verify completion of the services for which the attorney seeks compensation, set a reasonable deadline to object to the application, and include a certificate of service. After notice and the expiration of the objection deadline, the applications for presumptively reasonable postconfirmation fees should be deemed approved by the court. Of course, the court may set a hearing on any fee request, even without objection, to determine whether the fees should be allowed.

Ethical considerations and fairness require that every attorney for a chapter 13 debtor disclose to the debtor the amount of the attorney's fees, including the potential fees for postconfirmation services, and the court's role in approving the fees. Model Rule of Professional Conduct 1.2(c) requires that the attorney ensure that fees for the attorney's representation, including separate fees for the postconfirmation services, are reasonable and that the client has given informed consent.

These requirements are discussed as part of the Commission's separate recommendation on limited-scope representation or "unbundling."[25]

Attorneys should not be required to use presumptively reasonable fees. In complex chapter 13 cases for which the attorney believes that the presumptively reasonable fee is not adequate compensation, the attorney should be allowed to apply for compensation on a "time and expense" basis through the regular processes in sections 329 and 330 and Federal Rule of Bankruptcy Procedure 2016. These processes permit the court to determine whether the attorney's compensation should be allowed based on time and expense or whether the presumptively reasonable fee is more appropriate.

In determining reasonable compensation, section 330(a)(3)(E) allows a bankruptcy court to consider whether the attorney "is board certified or otherwise has demonstrated skill and experience in the bankruptcy field." The Commission recommends that in setting a presumptively reasonable fee, judicial districts should consider board certification as a factor and increase the presumptively reasonable fee accordingly, as several jurisdictions already do. A slightly higher fee would incentivize bankruptcy attorneys to earn certification and provide clients with more highly qualified attorneys.

Finally, the Commission recommends regular review of presumptively reasonable fees. Presumptively reasonable fees that do not track rising costs or inflation become outdated, leading attorneys to use them less and defeating the purpose of having a presumptively reasonable fee.

Priority of Attorney Fees in a Chapter 13 Plan. Section 1326(b)(1) requires the payment of administrative expenses, including chapter 13 attorney's fees, either before or with each distribution to creditors. At the same time and absent the secured creditor's consent, section 1325(a)(5)(B)(iii)(I) requires that payments to secured creditors be in equal amounts. For attorney's fees paid through the plan, it has been difficult to reconcile these two provisions. Some courts have ruled that section 1326(b)(1) allows a chapter 13 plan to pay attorney's fees first, temporarily decreasing secured creditor payments until the attorney's fees are paid in full, then making increased payments to secured creditors in equal amounts.[26] Such plans are sometimes referred to as "step plans." Other courts have ruled that section 1325(a)(5)(B)(iii)(I)'s requirement of equal payments is paramount and prohibit step plans.[27]

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25 *See* § 3.02 Unbundling of Legal Services.

26 *See, e.g.*, *In re* Carr, 584 B.R. 268 (Bankr. N.D. Ill. 2018); *In re* Marks, 394 B.R. 198 (Bankr. N.D. Ill. 2008); *In re* Erwin, 376 B.R. 897 (Bankr. C.D. Ill. 2007). *Collier* also adopts this position:

> Some courts have promulgated rules or procedures that delay the payment of attorney's fees in chapter 13 cases by spreading them out over some or all of the duration of the plan. However, such delay contravenes section 1326(b)(1). The requirement that these fees be paid first may mean that equal monthly payments to secured creditors required under section 1325(a)(5)(B)(iii)(I) must be deferred, with the secured creditor provided adequate protection during the period administrative expenses are paid.

8 Collier on Bankruptcy ¶ 1326.03[1] (16th ed. Richard Levin & Henry Sommer eds.).

27 *See, e.g.*, *In re* Shelton, 592 B.R. 193 (Bankr. N.D. Ill. 2018); *In re* Micelli, 587 B.R. 493 (Bankr. N.D. Ill. 2018); *In re* Williams, 583 B.R. 453 (Bankr. N.D. Ill. 2018); *In re* Romero, 539 B.R. 557 (Bankr. E.D. Wis. 2015); *In re* Sanchez, 384 B.R. 574 (Bankr. D. Or. 2008).

The Commission discussed this split in the case law, noting that it is tied into a larger debate about the extent to which section 1325(a)(5)(B)(iii)(I) allows uneven or balloon payments to secured creditors. The Commission decided not to take a position on the split in the case law. The Commission believes that a uniform resolution of this issue should develop through the normal appellate process.

B. Attorney Roles & Responsibilities

§ 3.04 Attorney Competency & Remedying Lawyer Misconduct

(a) Individuals and organizations with enforcement and disciplinary responsibility for attorneys in bankruptcy — including individual attorneys, case trustees, bankruptcy judges, the Office of the United States Trustee, state bar disciplinary committees, and United States Attorneys — should diligently and vigorously employ the many tools available to address attorney misbehavior.

(b) Increased enforcement of existing rules carries with it at least two burdens: an increased workload on those enforcing the rules, and the conflict inherent in bankruptcy judges simultaneously undertaking the roles of investigator, prosecutor, hearing officer, and final arbiter. These burdens can be at least partially addressed by the formation of committees or other bodies at the local level charged with investigating and resolving complaints against offending attorneys. These bodies could be staffed by judges, local attorneys, or a combination of the two.

(c) Any such local bodies, and the procedures governing them, should be approved by the relevant bankruptcy and district courts and should be adopted as local rules. Some districts have already implemented such systems. In smaller districts, the extension of existing cooperation regarding caseloads among adjacent districts should be extended to include assistance in addressing improper behavior.

(d) In addition to the sting of sanctions, courts and other entities should also employ incentives to practice ethically. In this regard, one incentive should be consistently awarding enhanced fees to professionals who are "board certified or [who have] otherwise . . . demonstrated skill and experience in the bankruptcy field," as authorized by 11 U.S.C. § 330(a)(3)(E). This enhancement should be implemented by local court rules, which should provide details encouraging compliance, such as permitting defined enhancements when the representation is by a firm in which some, but not all, of the attorneys have been board certified.

(e) As a disincentive to practice incompetently, bankruptcy courts should docket all disciplinary orders in such a way that all such orders can be searched and found by interested parties, including the public, the press, and governmental agencies such as state bar disciplinary authorities. In particular, the Administrative Office of the United States Courts (AO) should monitor disciplinary filings and include in its annual report a summary of all disciplinary orders. This summary should not only indicate the types of discipline or sanctions ordered but should also note and tabulate whether the entity disciplined was a debtor, creditor, trustee, governmental agency, or an attorney (with the affiliation of the attorney also noted).

RULE 2016-1 COMPENSATION OF PROFESSIONALS

(A) ***Interim Compensation***: The party seeking interim compensation or reimbursement for services under FRBP 2016 shall obtain a hearing date from the Court and shall give notice as required in FRBP 2002(a)(6) and 2002(c)(2). The party shall file with the Court proof of service evidencing proper notice of the scheduled hearing.

(B) ***Attorney's Disclosure Statement***: Pursuant to 11 U.S.C. §329 and FRBP 2016, each attorney representing a debtor under any chapter of the Bankruptcy Code shall file an Attorney's Disclosure Statement, irrespective of the amount of fees received or requested. The Disclosure Statement, if not filed with the petition, shall be filed not later than 14 days after the later of the filing of the petition or the date that counsel is engaged. If the representation by counsel is not in a case assigned to the Electronic Case Files System, the Statement shall be filed in original only, with a certificate evidencing service upon the United States trustee and the case trustee, if any. Otherwise, the Statement shall be filed consistent with the Electronic Case Files System requirements approved by the Court.

(C) ***For Debtor's Attorney in Chapter 13 Case***

(1) **Generally**

(a) The Court may award fees and expenses to the attorney for the debtor(s) in a chapter 13 case, without a hearing, at the Court's discretion, in an amount not to exceed the fee, as specified in the "Adjustment of Dollar Amounts" statement published and updated periodically by the Clerk, as approved by the Court, as provided for in subparagraph (C)(3)(a) of this Local Bankruptcy Rule, and subject to periodic adjustment, as provided for in subparagraph (C)(3)(e) of this Local Bankruptcy Rule.

(b)(i) An application for an initial request for compensation in excess of the amount authorized under subparagraphs (C)(1)(a) and (C)(3)(a) must conform to Federal Rule of Bankruptcy Procedure 2016 and this Local Bankruptcy Rule.

(ii) An application for a supplemental fee, as authorized under subparagraph (C)(3)(d), regardless of the amount sought, must conform to Federal Rule of Bankruptcy Procedure 2016 and this Local Bankruptcy Rule.

(iii) An application, as prescribed in subparagraph (C)(1)(b)(i) or (ii) of this Local Bankruptcy Rule, must conform to the requirements set forth in subparagraphs (C)(3)(d)(i) and (ii) of this Local Bankruptcy Rule.

(c) At the commencement of the chapter 13 case, the attorney for the debtor(s) must elect and declare the manner with which to request compensation in the case, either:

(i) as set forth in subparagraphs (C)(1)(a) and (C)(3)(a) of this Local Bankruptcy Rule, or

(ii) by filing an application for compensation and reimbursement of expenses in the manner set forth in subparagraphs (C)(3)(d)(i) and (ii) of this Local Bankruptcy Rule.

(d) An attorney requesting compensation by application in accordance with subparagraph (C)(1)(c)(ii) of this Local Bankruptcy Rule, shall file with the Clerk a properly completed form substantially in compliance with the Application for Compensation of Attorney for Debtor(s) approved by the Court (Exhibit 10-A to these Local Bankruptcy Rules) and available from the Clerk upon request or from the Court's Internet web site, www.vaeb.uscourts.gov. A proposed order allowing compensation shall include the summary (and accompanying table), as set forth at paragraph 4 of Exhibit 10-A.

(2) ***Fees Requested Not in Excess of $3,000 [For All Cases and Proceedings Filed Prior to August 1, 2014]***: Exhibit 9 to these Local Bankruptcy Rules, with respect to the time periods specified therein, for all cases and proceedings filed prior to August 1, 2014, shall govern fee and actual and necessary expense reimbursement requests.

(3) ***Amount of "No-Look" Fee Specified under Subparagraphs (C)(1)(a) and (C)(3)(a)***

(a) If the initial fee charged to a debtor(s) for services in a Chapter 13 case does not exceed the fee, as specified in the "Adjustment of Dollar Amounts" statement published and updated periodically by the Clerk, as approved by the Court, (excluding the initial filing fee), a formal application for approval and payment of the unpaid amount through the chapter 13 plan will not be required if the total fee and the unpaid portion clearly is set forth in the chapter 13 plan, and the fee is consistent with the disclosure of compensation statement filed under Federal Rule of Bankruptcy Procedure 2016 at the commencement of the case. An election under this subparagraph must be made at the commencement of the case; otherwise, it shall be deemed waived and compensation and reimbursement of expenses shall be requested in the manner set forth in subparagraph (C)(3)(d)(i) and (ii) of this Local Bankruptcy Rule.

(i) The chapter 13 plan and Rule 2016 disclosure of compensation statement will be treated as the application required by Rule 2016(b), and the order confirming the plan will be treated as an order approving compensation.

(ii) The attorney for the debtor(s) shall serve a copy of the chapter 13 plan and Rule 2016 disclosure of compensation statement on the debtor(s), the chapter 13 trustee and the United States trustee. With the Rule 2016 disclosure of compensation statement, the attorney for the debtor(s) shall file a proof of service evidencing proper service, as set forth herein.

(iii) Any objection to allowance and payment of compensation in the amount stated in the chapter 13 plan must be filed no later than the last day for filing objections to confirmation of the plan. If no objection is filed, the Court may approve the disclosed compensation and confirm the plan without holding a hearing.

(iv) The attorney for the debtor(s) should not send a bill directly to the debtor(s). If the debtor(s) receive(s) a bill from the debtor's(s') attorney, the debtor(s) should send a copy of the bill to the chapter 13 trustee.

(v) Notwithstanding the provisions of subparagraph (C)(3)(a)(iii) of this Local Bankruptcy Rule, nothing will prevent or prohibit the United States trustee or the chapter 13 trustee from filing pleadings or otherwise challenging fees awarded under this rule to the attorney for the debtor(s) after confirmation of the debtor's(s) plan, should circumstances warrant such a challenge. Any such challenge shall be determined by the Court after notice and a hearing. In addition, the Court, *sua sponte*, may suspend the application of this rule to the debtor's(s') attorney. In such case, the attorney for the debtor(s) may request a hearing within 14 days of the Court's ruling.

(b) Exhibit 9 to these Local Bankruptcy Rules does not apply to the foresaid cases and proceedings under paragraph (C)(3) of this Local Bankruptcy Rule.

(c) Except as set forth at subparagraph (C)(3)(d) of this Local Bankruptcy Rule, if the attorney for the debtor(s) elect(s), and declare(s), at the commencement of the case, to request compensation not to exceed the amount set forth in subparagraphs (C)(1)(a) and (C)(3)(a), that attorney shall not unbundle legal services in the case and must cover, at a minimum, all services typically required during the pendency of the case including, but not limited to, those that reasonably would be expected to obtain confirmation of a plan, and, ultimately, completion of the plan and, if available, a discharge.

(d) Should a debtor(s) need to commence or defend an adversary proceeding under Part 7 of the Federal Rules of Bankruptcy Procedure, or an appeal, the attorney for the debtor(s) may request leave to withdraw as attorney or to seek additional compensation in connection with the adversary proceeding or appeal. The representation of a debtor(s) in connection with any such adversary proceeding or appeal would be treated as a separate billing matter, for which the Court may allow additional compensation, after notice and a hearing, on a time-and effort basis, subject to the supplemental fee application process set forth below.

(i) The supplemental fee application must be supported by detailed, contemporaneous time and expense records showing, for each discrete activity, the date and time expended, identity of the attorney or paralegal providing the service and amount requested. For the purpose of this provision, a "contemporaneous" time and expense record is one made at or near the time of the activity being recorded or the expense being incurred, but in any event no later than the next business day. Any time entry that has been reconstructed because contemporaneous records were not made, or, if made, are not available, must be identified clearly, and an explanation provided for the absence of a contemporaneous record. The application for supplemental compensation shall state the period covered by the application. Time entries should be shown to the nearest tenth of an hour (i.e., the nearest 6 minutes), and travel time should be shown separately from any court appearance or other out- of-court activity to which it relates. The application shall affirmatively state the

amount, if any, of posted time and charges written off in the exercise of billing discretion.

(ii) An attorney requesting supplemental compensation by application in accordance with subparagraph (C)(3)(d)(i) of this Local Bankruptcy Rule, shall file with the Clerk a properly completed form substantially in compliance with the Application for Supplemental Compensation of Attorney for Debtor(s) approved by the Court (Exhibit10-B to these Local Bankruptcy Rules) and available from the Clerk upon request or from the Court's Internet web site, http://www.vaeb.uscourts.gov. A proposed order allowing compensation shall include the summary (and accompanying table), as set forth at paragraph 4 of Exhibit 10-B.

(iii) At the Court's discretion, in addition to the supplemental fee application described in subparagraph (C)(3)(d)(i) above, a hearing on the application need not be held upon the consent of the chapter 13 trustee as evidenced by that individual's endorsement on a proposed order approving the application.

(iv) In lieu of the procedure set forth in subparagraph (C)(3)(d)(i) of this Local Bankruptcy Rule, the attorney for the debtor(s) may elect to disclose a fee of $500 plus any out-of-pocket expenses (e.g., the filing fee, title search fees or appraisal fees) to represent the debtor(s) in such an action, the disclosure of which must be made at the commencement of the adversary proceeding, appeal, or motion initiating the action to determine the extent, validity, priority or enforceability of a lien secured by the debtor's(s') principal residence.

(e) The level of compensation set forth at subparagraphs (C)(1)(a) and (C)(3)(a) of this Local Bankruptcy Rule will be adjusted on a periodic basis to apply to the cases commenced after the adjusted level becomes effective by:

(i) the percentage of adjustment to the rate of pay prescribed in the General Schedule for statutorily affected federal civilian employees;

(ii) an increase in the filing fee for a case commenced under chapter 13 of title 11, United States Code.

Comments

2016-1(B) This change clarifies how compensation should be paid or disclosed when new counsel is substituted. [Change effective 2/1/00.]

2016-1(C) This paragraph is repealed. Its provisions will be governed by standing order of the Court. [Repeal effective 3/17/08.]

2016-1 A time-computation adjustment has been made at paragraph (B) to conform to a revision to the Federal Rules of Bankruptcy Procedure that takes effect December 1, 2009. Stylistic changes have been made to the text of the LBR as well. [Changes effective 12/01/09.]

2016-1(C) Standing Order No. 08-1 is rescinded effective as to chapter 13 cases filed on or after the effective date of this paragraph's implementation. That standing order remains in effect, however, for previously filed chapter 13 cases. This paragraph includes procedures governing all chapter 13 cases filed on or after the effective date of this paragraph's implementation. [New Rule effective 8/1/14.]

2016-1 Subparagraphs (C)(1)(a) and (C)(3)(e) are amended to provide a means by which adjustments to dollar amounts provided for in this rule can be made available without the necessity of amending discrete rule provisions. For this purpose, the Clerk has been directed by the Court to publish an "Adjustment of Dollar Amounts" statement, and update that statement periodically, as directed by the Court. To do so, the Clerk has created an "Adjustment of Dollar Amounts" hyperlink at the Court's Internet web site home page, www.vaeb.uscourts.gov, at the "Court Resources" button on that page. A stylistic change also is made to subparagraph (C)(1)(a). [Changes effective 12/1/15.]

RULE 2016-2 ADMINISTRATIVE CLAIMS OF ENTITIES OTHER THAN PROFESSIONALS

Except for fees and expenses subject to 11 U.S.C. §330, a chapter 7 trustee shall have the authority, prior to approval of the trustee's final report, without further order of the Court, to pay: (1) reasonable and necessary administrative expenses in an aggregate amount not exceeding the amount specified in the "Adjustment of Dollar Amounts" statement published and updated periodically by the Clerk, as approved by the Court, per case; and (2) administrative taxes. The dollar limit specified in the "Adjustment of Dollar Amounts" statement will be adjusted in the same manner as the adjustments provided for by 11 U.S.C. §104(a).

Comments

2016-2 This rule is new. The adjustments under 11 U.S.C. §104(a) are made every three years, the first such adjustments having occurred on April 1, 1998, and are published in the Federal Register. The dollar limit specified in the "Adjustment of Dollar Amounts" statement is the same as the federal exemption for motor vehicles provided in 11 U.S.C. § 522(d)(2) (currently $3,675), and therefore the periodic adjustment will be easily ascertainable by reference to that section. Use of this statement provides a means by which the information can be made available without the necessity of amending discrete rule provisions For this purpose, the Clerk has been directed by the Court to publish an

78 B.R. 904
United States Bankruptcy Court,
S.D. Illinois.

In re WIEDAU'S, INC., Debtor.

Bankruptcy No. BK 86–30293.
|
Oct. 22, 1987.

Synopsis
Debtor's attorney filed application for fees in Chapter 7 proceeding. The Bankruptcy Court, Kenneth J. Meyers, J., held that attorney was only entitled to $2,500, even though application itemized attorney's time at $8,450.

Ordered accordingly.

West Headnotes (20)

[1] **Bankruptcy**
Necessity of service

Services that are subject of fee application in bankruptcy proceeding must be compensable as legal services, and services have to be actual and necessary. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[2] **Bankruptcy**
Sufficiency; Documentation and Itemization

Proper fee application in bankruptcy proceeding must list each activity, its date, attorney who performed work, description of nature and substance of work performed, and time spent on work; records which give no explanation of activities performed are not compensable. Bankr.Code, 11 U.S.C.A. §§ 328(b) 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

10 Cases that cite this headnote

[3] **Bankruptcy**
Correspondence, conferences, and telephone calls

In order for telephone call listed on application for attorney's fees to be compensable, purpose of conversation and person called or calling must be clearly set out. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

3 Cases that cite this headnote

[4] **Bankruptcy**
Correspondence, conferences, and telephone calls

In order for conference or meeting listed on application for attorney's fees to be compensable, entry must contain at the very least nature and purpose of meeting or conference as well as parties involved. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

2 Cases that cite this headnote

[5] **Bankruptcy**
Time

In order for time entries for drafting documents to be compensable on application for attorney's fees, entries must specify document involved and matter to which it pertains; time entries for drafting letters should briefly set forth nature of each letter and to whom it was addressed. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[6] **Bankruptcy**
Research

In order for time spent on research to be compensable on application for attorney's fees, nature and purpose of legal research must be noted as well as matter or proceeding for which research was utilized. Bankr.Code, 11 U.S.C.A.

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§§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[7] **Bankruptcy**
Time

In order for time spent on activities such as court appearances, preparation for court appearances, and depositions to be compensable on application for attorney's fees, nature and purpose of activity must be noted. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

2 Cases that cite this headnote

[8] **Bankruptcy**
Aggregation or lumping; ineligible items

Applicants for attorney's fees may not circumvent minimum time requirement or any of the detail requirements by "lumping" number of activities into single entry; each type of service must be listed with corresponding specific time allotment. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

13 Cases that cite this headnote

[9] **Bankruptcy**
Time

Unexplained abbreviations in time entry on application for attorney's fees will render time entry not compensable. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[10] **Bankruptcy**
Sufficiency; Documentation and Itemization

Application for attorney's fees in bankruptcy proceedings must state any attorney's fees previously approved by the court, including date of approval and amount of fees or expenses approved. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[11] **Bankruptcy**
Duplicative services; co-counsel

No more than one attorney may charge, on application for attorney's fees, for intraoffice conference, unless explanation of each attorney's participation is given. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

2 Cases that cite this headnote

[12] **Bankruptcy**
Duplicative services; co-counsel

When more than one attorney appears in court on motion or argument or for conference, no fee should be sought, on application for attorney's fees, for nonparticipating counsel; attorneys should not circumvent this requirement by merely rotating or taking turns participating in single court appearance. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

2 Cases that cite this headnote

[13] **Bankruptcy**
Hourly rate

On application for attorney's fees, senior partner rates will be paid only for work that warrants attention of senior partner. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

1 Cases that cite this headnote

[14] **Bankruptcy**
Items and Services Compensable

While it is recognized that particular questions requiring research will arise from time to time, no

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fees will be allowed, on application for attorney's fees, for general research on law which is well known to practitioners in the area of the law involved. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

3 Cases that cite this headnote

[15] Bankruptcy

Items and Services Compensable

Time spent reading work product of another attorney is not compensable on application for attorney's fees unless the reading is required to form some kind of response or to perform particular task. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

2 Cases that cite this headnote

[16] Bankruptcy

Ministerial or routine acts; travel or other nonlegal work

Routine and ministerial services, such as telephone calls and correspondence, do not have to be compensated at lower rate, on application for attorney's fees, than "truly legal services," such as litigation, research, and document drafting. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

Cases that cite this headnote

[17] Bankruptcy

Preparation of fee request

Absent unusual circumstances, time spent preparing application for fees is not compensable on application for attorney's fees; time spent preparing fee petition is not properly a service rendered on behalf of debtor estate, but rather, is necessary expense of doing business. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

6 Cases that cite this headnote

[18] Bankruptcy

Factors considered in general

In determining amount of compensation to be awarded on application for attorney's fees the bankruptcy court will consider whether tasks were performed within reasonable number of hours and whether requested hourly rate is reasonable. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

3 Cases that cite this headnote

[19] Bankruptcy

Factors considered in general

In determining reasonableness of number of hours and hourly rate, the bankruptcy court, on application for attorney's fees, will consider the following factors: time and labor required; novelty and difficulty of questions; skill necessary to perform legal service properly; preclusion of other employment by attorney due to acceptance of case; customary fee for similar work in community; time limitations imposed by client or circumstances; experience, reputation, and ability of attorneys; "undesirability" of the case; nature and length of professional relationship with client; and awards in similar cases. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

8 Cases that cite this headnote

[20] Bankruptcy

Time

Attorney was only entitled to $2,500 for services rendered to Chapter 7 debtor, even though fee application itemized attorney's time at $8,450; several entries on application were unexplainable and failed to show how services benefited the estate. Bankr.Code, 11 U.S.C.A. §§ 328(b), 330(a)(1); Rules Bankr.Proc.Rule 2016(a), 11 U.S.C.A.

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1 Cases that cite this headnote

Attorneys and Law Firms

***906** Melvin W. Trotier, Belleville, Ill., for debtor.

MEMORANDUM AND ORDER

KENNETH J. MEYERS, Bankruptcy Judge.

I. INTRODUCTION

This case is before the court to consider counsel for debtor's petition for attorney's fees. Some history is necessary to bring the Court's ruling on the matter into proper focus. Apparently, prior to October 1, 1986 (the date on which the undersigned became Bankruptcy Judge), applications for fees received very little scrutiny from the Court. Since October 1, 1986, this Court has taken the position that attorneys should be able to justify to the Court the time expended in bankruptcy proceedings in much the same manner they would have to account to a good client. In light of the hundreds of fee applications filed with this Court each year and the problems which are reoccuring, the Court believes it is now imperative that specific standards be enunciated which attorneys (and for that matter other professionals), must follow in preparing their fee applications. [1] The court has adopted, in large part, the same standards established by the Court in *In re Wildman,* 72 B.R. 700 (Bankr.N.D.Ill.1987). The Court will discuss those standards and will then review the fee petition in the present case.

***907** The Court initially notes that it has wide discretion in reviewing fee applications. *Matter of U.S. Golf Corp.,* 639 F.2d 1197, 1201 (5th Cir.1981); *In re Wildman,* 72 B.R. at 705. "The standard of review on appeal of a fee award by a bankruptcy court is whether the bankruptcy judge has abused discretion." *Id.* "If no objections are raised to a fee request, the Bankruptcy Court is still not bound to award the fee as prayed. It has the independent authority and responsibility to determine the reasonableness of all fee requests, regardless of whether objections are filed." *Id.* Finally, the burden of proof in all fee matters rests on the applicant. *Id.* at 708; *In re Lindberg Products, Inc.,* 50 B.R. 220, 221 (Bankr.N.D.Ill.1985).

II. STANDARDS OF REVIEW

In reviewing applications for attorney's fees, the Court must consider three broad areas. Those areas were described by the *Wildman* court as follows:

> 1. Are the services that are the subject of the application properly compensable as legal services?
>
> 2. If so, were they necessary and is the performance of necessary tasks adequately documented?
>
> 3. If so, how will they be valued? Were the necessary tasks performed within a reasonable amount of time and what is the reasonable value of that time?

In re Wildman, 72 B.R. at 704–05.

A. *Legal Services*

[1] The services that are the subject of the fee application must be compensable as legal services. In bankruptcy cases, the question of whether services are "legal services" most often arises when an attorney acts as both trustee *and* attorney for the trustee. It is this Court's position that "an attorney is never entitled to professional compensation for performing duties which the Bankruptcy Code imposes upon the trustee." *Id.* at 706 (citations omitted). This holding is premised upon section 328(b) of the Code, which provides:

> [T]he court may allow compensation for the trustee's services as such attorney ... only to the extent that the trustee performed services as attorney ... for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney ...

11 U.S.C. § 328(b). Services that a trustee normally performs for an estate with the assistance of counsel will be compensated in accordance with section 326 of the Code. Therefore, "fee applications submitted by counsel for trustees must list time spent and services rendered as the trustee separate from time spent and services rendered as attorney for the trustee." *Id.* at 707.

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B. *Actual and Necessary Services*

Section 330 of the Bankruptcy Code provides that the Court may award to professionals "reasonable compensation for actual, necessary services" rendered by such professionals. 11 U.S.C. § 330(a)(1). Additionally, Rule 2016(a) provides, in part:

> A person seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested.

"The primary objective of any fee petition is to reveal sufficient data to enable the Court to determine whether the services rendered were reasonable, actual and necessary." *In re Wildman,* 72 B.R. at 707–08. Therefore, all fee applications will be reviewed and evaluated in accordance with the following requirements: [2]

[2] 1. *Itemized Daily Entries.* A proper fee application must list each activity, its date, the attorney who performed the work, a description of the nature and substance of the work performed, and the time spent on the work. Records which ***908** give no explanation of the activities performed are not compensable.

2. *Particular Entries.*

[3] *Telephone Calls.* An entry of "telephone call" or even "telephone call with Mrs. X" is insufficient. The purpose of the conversation, and the person called or calling, must be clearly set out.

[4] *Conferences.* Similarly, an entry of "conference" or "meeting," "conference with X" or "conversation with X" is insufficient. The entry should at the very least note the nature and purpose of the various meetings and conferences as well as the parties involved.

[5] *Drafting Letters or Documents.* Time entries for drafting documents should specify the document involved and the matter to which it pertains. Time entries for drafting letters should briefly set forth the nature of each letter and to whom it was addressed.

[6] *Legal Research.* Entries of "research," "legal research" or "bankruptcy research" are insufficient. The nature and purpose of the legal research should be noted. In addition, the entry should indicate the matter or proceeding for which the research was utilized.

[7] *Other Entries.* Time entries for other activities, such as court appearances, preparation for court appearances, and depositions should also briefly state the nature and purpose of the activity.

[8] 3. "*Lumping.*" Applicants may not circumvent the minimum time requirement or any of the requirements of detail by "lumping" a number of activities into a single entry. Each type of service should be listed with the corresponding specific time allotment. Otherwise, the Court is unable to determine whether or not the time spent on a specific task was reasonable. Therefore, services which have been lumped together are not compensable.

[9] 4. *Abbreviations.* If abbreviations are used in the itemized daily entries, they must be explained somewhere in the application. Unexplained abbreviations will render the time entry not compensable.

[10] 5. *Prior Fee Applications.* In addition to the above requirements, the application should state those fees, if any, that were previously approved by the Court. Such entry shall include the date of the approval of the prior application or applications and the amount of fees and expenses approved.

While the above requirements help to establish that the services performed were "actual," the Court must also determine that the services were necessary. This determination will be made in accordance with the following requirements:

1. *Individual Responsibility.* Generally, attorneys should work independently, without the incessant "conferring" that so often forms a major part of many fee petitions. Examples of the kind of work for which only one attorney will be compensated are:

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[11] *Conferences.* While some intraoffice conferences may be necessary, no more than one attorney may charge for it unless an explanation of each attorney's participation is given.

[12] *Court Appearances.* When more than one attorney appears in court on a motion or argument or for a conference, no fee should be sought for non-participating counsel. Attorneys should not circumvent this requirement by merely rotating or taking turns participating at a single court appearance.

Depositions. Absent special circumstances, one attorney is sufficient to handle any deposition or § 2004 examination.

[13] 2. *Appropriate Level of Skill.* Senior partner rates will be paid only for work that warrants the attention of a senior partner. A senior partner who spends time reviewing documents or doing research a beginning associate could do will be paid at the rate of a beginning associate. Similarly, non-legal work performed by a lawyer which could have been performed by less costly non-legal employees should ***909** command a lesser rate (*e.g.,* copying or delivering documents).

[14] 3. *Legal Research.* Counsel who are sufficiently experienced to appear before this Court are presumed to have an adequate background in the applicable law. While it is recognized that particular questions requiring research will arise from time to time, no fees will be allowed for general research on law which is well known to practitioners in the area of law involved.

[15] 4. *Document Review.* Fees are not allowable for simply reading the work product of another lawyer as a matter of interest. Only if such review is required to form some kind of response or to perform a particular task in the case will document review be compensable.

[16] 5. *Routine Services.* Some courts have held that "routine and ministerial services," that is, telephone calls and correspondence, should be compensated at a lower rate than "truly legal services," such as litigation, research and document drafting. In this Court's view, this is an unwarranted distinction which is contrary to the fundamental notion that counsel should be encouraged to resolve matters informally whenever possible in order to avoid costly litigation.

[17] 6. *Fee Petition Preparation. In Wildman,* the court held that attorneys should be compensated for time spent in preparing fee applications. *Id.* at 710. However, other courts have held that fee petition preparation time is not compensable. *See, e.g., In re Wilson Foods Corp.,* 36 B.R. 317, 323 (Bankr.W.D.Okla.1984). This Court agrees. Time spent preparing a fee petition "is not properly a service rendered on behalf of the debtor-estate, but a necessary expense of doing business." *Id.* at 323. Therefore, absent unusual circumstances, such fee requests shall be denied.

C. *Amount of Compensation.*

[18] [19] In determining the amount of compensation to be awarded, the Court will consider 1) whether the tasks were performed within a reasonable number of hours, and 2) whether the requested hourly rate is reasonable. These factors, which were originally established in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir.1974), have been adopted by other bankruptcy courts, including the *Wildman* court. *See In re Wildman,* 72 B.R. at 712. Determining the reasonableness of the number of hours and the hourly rate requires further consideration of the following specific factors: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill necessary to perform the legal service properly; 4) the preclusion of other employment by the attorney due to acceptance of the case; 5) the customary fee for similar work in the community; 6) time limitations imposed by the client or the circumstances; 7) the experience, reputation and ability of the attorney; 8) the "undesirability" of the case; 9) the nature and length of the professional relationship with the client; and 10) awards in similar cases. *Johnson,* 488 F.2d at 717–719; *In re Wildman,* 72 B.R. at 712. Upon consideration of these factors, the Court will decide whether the amount of compensation requested in the fee petition is in fact reasonable or whether the stated fee should be decreased.

III. APPLICATION OF STANDARDS TO THE PRESENT CASE

[20] In reviewing the instant fee petition and its history, the Court cannot conclude that it even begins to meet the standards described above. It would not well serve the Court's time to specify the deficiencies for they are too numerous. Some elaboration is, however, helpful in understanding the task faced by this Court in reviewing such applications.

On July 17, 1986 counsel filed a fee petition for $2,500.00, which was not substantiated by any itemized time. He was

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advised by this Court that such a fee petition would no longer be approved. Apparently, in response to that requirement, he now itemizes his time at $8,450.00. Oh, the benefits of itemization. It might be argued that substantial time has been expended since July 1986 on this case. However, a review ***910** of the itemized bill and the court record does not support this argument. In fact, it is difficult to support most of the work allegedly performed after March 17, 1986, the date on which the bankruptcy petition was filed.

This was a Chapter 7 proceeding in which the Trustee pursued the assets of the estate. Counsel for the debtor appears to have pursued matters which did not benefit the estate. For example, there are numerous entries regarding Judge Fiss, Judge O'Brien and Judge Kernan. These are not bankruptcy judges and the Court can only assume that they are state judges, and that this time somehow relates to state court proceedings. There is no showing that such proceedings benefited the estate. Further review of the fee application reveals many more questionable entries, as demonstrated by the following examples:

3/14/86	Letter to Hoelscher—sent 1985 Wage Statement and copy of payments from Local 534; best can do—(20)
3/19/86	Notice of 341 Local 534 returned; also Toledo Scale, St. Louis; Assist of Credit, Charles Seper, Cheryl Hoffman, Sherri Foran and Dennis Haller—1 (20)
4/2/86	Bakery Union, Health, Welfare and Benefit invoices for Feb. 1986 & March, 1986—(30)
4/3/86	Illinois Bell called re telephone number 235-4011—(15)
5/2/86	Larry Henson called—(15)
6/16/86	Copy letter from kunin re private sale—(15)
7/14/86	Conference with Gary; All foregoing —(60)
8/4/86	Telephone call from IRS; If get records showing sales and expenses, compute tax; Gary said give Steve to go—(20)
12/12/86	Telephone Samson; What's this all

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	about? Fighting it—(20)
1/28/87	Telephone from Elliott; * not know, me gone; call Gary; What arrangements with IRS—(5)
2/28/87	* What happened on Monte Carlo—(15)

Most of these entries give the Court no indication as to why the services were rendered or how the services benefited the estate. Certain entries are simply unexplainable, as evidenced by such phrases as "best can do," "fighting it," and "What happened on Monte Carlo." Some of the entries refer to individuals who are not identified anywhere in the petition, while other entries indicate unreasonable amounts of time spent on particular activities. Fifteen minutes to copy a letter is not justified under any circumstances. Perhaps the most shocking entry appears at 8/16/87: "While itemizing services, found letter to Samson with checks for **Wiedau**, totaling $8090.33 from distributors and lotto—(30)." Samson is the Trustee. Apparently, counsel, when itemizing his time, discovered some checks that he failed to turn over to the Trustee and he is now charging the estate one half hour to rectify his mistake. (The Trustee has subsequently advised the Court that due to the delay, some of these checks may not be collectible.) The Court is appalled by such conduct. To have neglected to perform his duties is bad, to seek to be rewarded for such neglect is abhorrent.

Therefore, the Court will allow fees as follows:[3] $2,500.00 for services rendered, minus 1) payments previously received and 2) any checks payable to the Trustee after discovery on August 16, 1987 that are not now collectible.

All Citations

78 B.R. 904

Footnotes

1 Although this order addresses an attorney's application for fees, many of the requirements are equally applicable to other applications for professional fees.

2 The Court adopts, with certain exceptions, many of the same requirements established by the *Wildman* court at 708–09. References to other case decisions, cited in the *Wildman* opinion, have been omitted.

3 The Court is inclined to reject the application in its entirety but has elected not to do so for several reasons: (1) it is obvious counsel has expended some time which benefited the estate (2) the Court lacks the time to consider further applications by petitioner (3) because of past practices and lack of clearly enunciated standards some deference has been granted in this case. Let counsel and other professionals be admonished that the standards set forth in this order will be strictly adhered to in the future. The duties of the Court include reviewing fee applications, but not rewriting applications. Future applications not in compliance will be summarily rejected.

End of Document

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ENTERED
06/13/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	
PERRY SHOTLOW	§	**Case No. 18-35219**
LASHURANDA DENISE SHOTLOW,	§	
	§	**Chapter 13**
Debtors.	§	

ORDER SUSTAINING CHAPTER 13 TRUSTEE'S OBJECTION TO THE NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES
[Doc. No. 57]

On May 23, 2019 and May 28, 2019, this Court held a hearing on the Chapter 13 Trustee's Objection to the Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed in the above-referenced case by U.S. Bank, National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc., Asset-Backed Pass-Through Certificates, Series 2006-AMC1 ("the Bank"). The Bank seeks payment for post-petition fees that it has incurred due to its retention of the law firm of Codilis & Moody, P.C. ("the Law Firm") for performing various services on behalf of the Bank. Specifically, these services pertain to preparing the Bank's proof of claim, reviewing the Debtor's payment history, reviewing the Debtor's Chapter 13 Plan, and filing a notice of appearance. The Chapter 13 Trustee, David G. Peake ("the Trustee"), objects and asserts that the requested fees of $900.00 are excessive. After listening to the testimony of one witness (Lisa Cockrell, the Senior Litigation Attorney for the Law Firm), reviewing the exhibits introduced into the record, and listening to closing arguments of the parties, the Court took the matter under advisement. The Court now issues this order to explain its ruling.

This Court enforces the U.S. Trustee Guidelines.[1] Here, the Law Firm has failed to comply with these guidelines. The invoices that the Law Firm introduced into evidence do not contain all of the information that the guidelines and applicable law require. The Law Firm's invoices contain only a vague description of the services rendered, the date the services were rendered, and the aggregate amount charged for the services. This is insufficient. The invoices need to contain the date that each service was rendered; the name or the initials of the person providing the service; the hourly rate of that person; the amount of time spent by that person on the specific service that was rendered; and the value of the service that was rendered.

Moreover, the invoices cannot contain lumping. Here, there is lumping. For example, the following description is set forth in the invoice: "Review of Plan and Notice of Appearance-(Rec from Brwr)" – and the aggregate amount of $150.00 is charged for these services.[2] Yet, aside from the fact that the total time spent on these services is not shown, these are two separate and discrete services that have been lumped inappropriately. The correct way is to set forth "Review of Plan" and then disclose who exactly is reviewing the plan, what that person's hourly rate is, how much time was spent reviewing the plan, and what the value of providing these services totals. Then, the next entry should be "Drafted Notice of Appearance" with disclosure regarding who exactly drafted this notice, what that person's hourly rate is, how much time was spent on this task, and what the value of providing this service totals.

This Court has written several opinions giving the bar notice that it enforces the U.S. Trustee Guidelines, as well as FED. R. BANKR. P. 2016(a). *See e.g., In re Digerati Techs. Inc.*, 537

[1] U.S. Dep't of Justice, Guidelines for Reviewing Applications for Compensation (Fee Guidelines) (2013), https://www.justice.gov/sites/default/files/ust/legacy/2013/06/28/Fee_Guidelines.pdf.

[2] This is just one example of the failure to comply with the U.S. Trustee Guidelines.

B.R. 317, 334 (Bankr. S.D. Tex. 2015).[3] Indeed, FED. R. BANKR. P. 2016(a) not only applies to attorneys who represent debtors, but also to attorneys who represent creditors. This Court has denied fees to those firms who have failed to comply with the guidelines and rules. The Court will not make an exception here. The Court acknowledges that the Trustee takes the position that the Law Firm is entitled to some amount of compensation, just not the $900.00 that it requests. This Court does not believe it should award any compensation to any law firm that fails to comply with the U.S. Trustee Guidelines and FED. R. BANKR. P. 2016(a). Accordingly, the Court denies all of the requested fees without prejudice to the Law Firm filing another application and attaching invoices that do comply with the U.S. Trustee Guidelines and FED. R. BANKR. P. 2016(a).

In her testimony, Ms. Cockrell gave some emphasis to the fact that the Law Firm bases its fees in accordance with Fannie Mae guidelines. This Court, however, is not bound by those same guidelines. Rather, this Court is focused on whether parties seeking to be paid from estate funds comply with the Bankruptcy Code, the Bankruptcy Rules, and the U.S. Trustee Guidelines. Here, there has not been complete compliance, and the Law Firm therefore suffers the consequences. The Court certainly wants capable lawyers—and there is no question that Ms. Cockrell is a very competent lawyer—to be paid. But, payment will be approved only with full compliance.[4]

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[3] "Indeed, lumping activities on fee statements violates the U.S. Trustee's Fee Guidelines, and this Court has repeatedly made it known in prior opinions over the past several years that it adheres to these guidelines and expects the practicing bar to follow them." *See, e.g., In re Ritchey,* 512 B.R. 847, 870-72 (Bankr. S.D. Tex. 2014); *In re Jack Kline Co., Inc.,* 440 B.R. 712, 752-53 (Bankr. S.D. Tex. 2010); *In re Energy Partners, Ltd.,* 422 B.R. 68, 69 (Bankr. S.D. Tex. 2009).

[4] If and when the Law Firm returns to Court to seek payment, the Court emphasizes that it will need a more detailed description than merely putting down "proof of claim" and requesting $500.00 in fees. Ms. Cockrell testified that her hourly rate is $215.00, which presumably means that she spent almost 2.5 hours on services relating to "proof of claim." The Court will need a greater description of exactly what services she provided with the proof of claim to justify the fees charged. For example, did she actually fill out the proof of claim form? Did she do calculations that are attached to the proof of claim? Did she meet with a representative of the Bank to review the accuracy of the information contained in the proof of claim?

Finally, the Court notes that the hearing was held on not only the $900.00 fee requested for services rendered in this case, but also for the same $900.00 fee (for identical services rendered) in four other cases.[5] It appears to this Court that what the Law Firm really wants is for this Court to approve a fixed fee of $900.00 for the same services that its attorneys and legal assistants render in every Chapter 13 case in which the Law Firm is retained. Stated differently, it appears to this Court that a law firm representing solely creditors wants this Court to implement the same "no look" fixed fee that is already in place for law firms who represent Chapter 13 debtors. The undersigned Judge is not averse to such a fixed fee procedure, but steps must first be taken to put such a procedure in place—and this has not yet been done. If the Law Firm wants to establish a "no look" fixed fee for creditors' attorneys, the undersigned Judge suggests that the Law Firm communicate with the Chief Bankruptcy Judge and request that an *en banc* hearing among all of the Bankruptcy Judges be held in the same manner that was done many years ago with respect to the "no look" fixed fee for the debtors' bar.

For all of the reasons set forth above, it is therefore:

ORDERED that the Trustee's objection to the Bank's Notice of Post-Petition Mortgage Fees, Expenses, and Charges is sustained in its entirety; and it is further

ORDERED that the $900.00 fee requested by the Bank is disallowed in its entirety; and it is further

[5] The Court is simultaneously entering orders in these four other cases denying the requested fee of $900.00 in each case.

ORDERED that the disallowance is without prejudice to the Bank seeking to recover its fees from the estate so long as it complies with the Bankruptcy Code, the Bankruptcy Rules, and the U.S. Trustee Guidelines.

Signed on this 12th day of June, 2019.

Jeff Bohm
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA

In re:

Compensation of Debtor's Counsel in Chapter 13 Cases; Guidelines and Procedures for Chapter 13 Fee Applications	))))	Standing Order No. 15-1

ORDER ON FEES FOR DEBTOR'S COUNSEL IN CHAPTER 13 CASES; ADOPTION OF GUIDELINES FOR FEE APPLICATIONS IN CHAPTER 13 CASES FILED ON OR AFTER AUGUST 1, 2015

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 for debtor's counsel in Chapter 13 cases.

NOW, IT IS THEREFORE ORDERED that:

1. The Guidelines for Fee Applications in Chapter 13 Cases Filed on or after August 1, 2015 ("Guidelines"), attached as Exhibit 1 to this Order, are hereby adopted by the Court.

2. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER DOES NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.

3. If the initial fee charged to a debtor for routine, expected services in a Chapter 13 case filed on or after August 1, 2015, does not exceed $4,000, a formal application for approval and payment of the unpaid amount through the Chapter 13 plan may not be required if (a) the total fee and the unpaid portion is clearly set forth in the Chapter 13 plan, (b) the fee is consistent with the disclosure of compensation filed under Federal Rule of Bankruptcy Procedure 2016, and (c) the total pre-confirmation fee does not exceed the reasonable value of actual services. Said amount shall include all routine costs in the case including, but not limited to, copying, postage, and communication fees; it shall not include any filing fees or actual costs paid to outside entities not owned or related to counsel for the debtor for credit reports, credit counseling and debtor education courses, or lien searches.

The Chapter 13 plan and Rule 2016 statement will be treated as the application required by Rule 2016(a) and the order confirming the plan will be treated as an order approving compensation. If counsel seeks approval of fees exceeding the presumptive amount, then the fee application

must clearly and conspicuously itemize all time expended and costs paid or to be paid. If counsel seeks a fee up to the presumptive amount, the actual reimbursable costs paid by the debtor must be itemized either within the body of the Disclosure of Compensation of Attorney For Debtor (Form B 203) or within an attachment to the form.

Any objection to allowance and payment of compensation in the amount stated in the Chapter 13 plan must be filed no later than the last day for filing objections to confirmation of the plan. If no objection is filed, the Court may approve the fee and confirm the plan without holding a hearing.

4. A. The Court expects the initial fee charged in the case to cover, at a minimum, all services that would reasonably be expected in order to obtain confirmation of a plan, and, ultimately, a discharge, including:

i. conferences to review the debtor's financial circumstances;

ii. preparation and filing of the petition and all required schedules, lists, and statements;

iii. preparation and filing of a plan and any amendments thereto in order to obtain confirmation;

iv. telephone calls and correspondence with the debtor, Chapter 13 trustee, and creditors throughout the life of the case;

v. representation at the meeting(s) of creditors;

vi. appearance, if required, at the confirmation hearing(s);

vii. review of the claims register, filing and other services related to uncontested objections to claim;

viii. filing by the attorney, during the period allowed by Fed. R. Bankr. P. 3004, of any claims not timely filed by the creditor which are necessary to achieve the primary objectives of the debtor's plan (e.g., secured claims and priority claims being paid by the Trustee and non-dischargeable unsecured claims);

ix. resolution of issues raised in the Chapter 13 Trustee's initial or supplemental report, objection(s) to confirmation, and/or motion(s) to dismiss, as well as any supplements to such items;

x. assistance to the debtor in filing any certifications required to obtain a discharge after plan payments are completed; and

xi. motions for relief from the automatic stay filed pre-confirmation and resolved without an evidentiary hearing.

B. The Court expects the initial fee to normally cover routine motions and objections pre-confirmation, as well as plan modifications needed to address such issues and matters such as classification of claims, valuations of collateral, interest rates to be paid on secured claims, arrearage amounts, pre-confirmation defaults, and amounts to be paid by the debtor.

C. If counsel elects to charge the presumptive fee referenced in paragraph 3, then there shall be a presumption that counsel will limit post-confirmation fees to the presumptive amounts set forth in Guideline 2(e) unless good cause is shown.

5. Any application for an initial fee in excess of $4,000 or for supplemental fees, regardless of the amount, must conform to Rule 2016(a) and the Guidelines adopted by the Court. The Guidelines include both procedural requirements as well as policy statements.

6. Unless authorized by further order of the Court, the attorney shall not send a bill directly to the debtor following the filing of the petition.

7. Should a case be dismissed prior to confirmation, the debtor's attorney may seek fees up to the lesser of the funds on hand held by the Trustee or the presumptive amount without the need for a formal fee application. The request should be made by separate motion set for hearing upon notice to the debtor and Trustee with an opportunity to object. The motion may be granted by the Court without notice if the debtor and trustee endorse the order.

8. This order shall take effect on August 1, 2015, and shall govern all Chapter 13 cases in this district filed on or after August 1, 2015.

Enter this 26th day of June, 2015.

REBECCA B. CONNELLY
Chief Judge

PAUL M. BLACK
Judge

Exhibit 1

GUIDELINES FOR FEE APPLICATIONS IN CHAPTER 13
CASES FILED ON OR AFTER AUGUST 1, 2015

1. Purpose

The Guidelines for Fee Applications in Chapter 13 Cases Filed on or after August 1, 2015 ("Guidelines") have been adopted by the Court to specify the format and procedures for submission of fee applications by attorneys representing the debtor in a Chapter 13 case and to set forth the policies and standards that will normally be followed by the Court in evaluating such applications. Compliance by applicants with the procedural requirements is mandatory, but applicants may apply for a fee at variance with the policy statement provided the application clearly identifies any such variance.

2. Procedural Requirements

a. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER AND GUIDELINES, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER AND THESE GUIDELINES DO NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.

b. Initial fee applications for amounts in excess of $4,000, and **all** supplemental fee applications in excess of the amount set forth in 2.e., must be supported by detailed, contemporaneous time and expense records **from the beginning of the case** showing, for each discrete activity, the date, time expended, identity of the attorney or paralegal providing the service, and amount requested. If a prior fee application has included time records from the beginning of the case, a subsequent application need include only time and expense records covering the period subsequent to the earlier application provided the current application identifies (by date and docket entry number) the earlier application.

c. For the purpose of these Guidelines, a "contemporaneous" time or expense record is one made at or near the time of the activity being recorded or the expense being incurred, but in any event no later than the next business day. Any time entry that has been reconstructed because contemporaneous records were not made, or, if made, are not available, must be clearly identified, and an explanation provided for the absence of a contemporaneous record.

d. Every application for compensation, whether initial or supplemental, shall state the period covered by the application. Time entries should be shown to the nearest tenth of an hour (*i.e.*, the nearest 6 minutes), and travel time should be shown separately from any court appearance or other out-of-office activity to

which it relates. Preparation of fee agreements and hearing time regarding fee agreements shall be billed at 75% of the normal hourly rate; billing for travel time for any matter shall not be permitted unless good cause is shown.

e. An exception to the requirement for contemporaneous time and expense records is allowed where the requested application is solely for one or more of the following post-confirmation services, and the amount requested does not exceed the amount shown:

Description	Amount
Defense of post-confirmation Motion for Relief from the Automatic Stay resolved without evidentiary hearing	$350
Defense of post-confirmation Trustee's Motion to Dismiss for payment default	$250
Post-confirmation modified Plan or Motion to Suspend	$400
Motion to Approve Sale/Motion to Approve Refinance/Motion to Incur Debt/Motion to Approve Loan Modification	$400
Adversary Proceeding (uncontested) including motion for default judgment	$450
Motion to Avoid Lien (uncontested)	$300

Filing of any of these documents in tandem, i.e., as a response to an affirmative pleading and as an affirmative motion, or vice versa, will not permit the party to receive both fees; the party will be entitled to the fee for only one of the matters. By way of example, a response to a motion to dismiss followed closely in time by a modified plan would not permit the party to claim a total fee of $650, rather the party would be entitled to $400 at the most.

If the attorney's fee request does not reduce the amounts required to be paid to unsecured creditors to an amount less than that required by 11 U.S.C. §§ 1325(a)(4) or 1325(b), attorney's fees may be paid through the Plan and from the unsecured pool and/or reduce the noticed dividend to unsecured creditors if said request is the first post-confirmation request for attorney's fees. Unless good cause is shown, subsequent requests for attorney's fees must result in an increase in the Plan funding to pay the fees through case administration.

f. For each attorney or paralegal providing services, the application shall state the person's name, status (attorney or paralegal), years admitted to practice (if an attorney), hourly rate, total hours, and requested compensation.

g. The application shall affirmatively state the amount, if any, of posted time and charges written off in the exercise of billing discretion.

h. An attorney requesting compensation by application in accordance with these Guidelines shall file with the Clerk a properly completed form substantially in compliance with the Application for Supplemental Compensation of Attorney for Debtor(s) appended to these Guidelines. The Clerk shall provide the form to an attorney upon request. The form is accessible in PDF-fillable format on the Court's Internet web site http://www.vawb.uscourts.gov and can be accessed by clicking the "Forms" button on the Court's Internet home page.

i. Unless otherwise provided differently in the Plan or confirmation order, attorney's fees provided in the Plan will be disbursed after payment of adequate protection payments and/or secured creditors' payments in equal monthly amounts pursuant to 11 U.S.C. § 1325(a)(5)(iii) and on a pro rata basis together with domestic support obligation claims, if any.

j. For the purposes of this Standing Order, contested shall mean a matter that results in the attorney's attendance at a hearing where an issue or issues have been placed into dispute, the opposing party appears, evidence is submitted and the matter is argued to the Court.

k. To the extent possible, the parties should seek to combine orders resolving a matter together with the order granting the fee. For instance, debtor's attorneys may include requests for fees in responsive or affirmative pleadings and the order resolving the matter may include disposition of the matter and request for attorney's fees. If an order combines these matters, the order's heading should specify the matter that is addressed as well as the disposition of the fee request. Or, debtor's attorneys may include their fee request for a post-confirmation amended plan within the amended plan. If this process is not practicable, a fee request may be filed and noticed in accordance with the provisions of 11 U.S.C. § 102(1) and an order may be entered after the expiration of any applicable response deadline.

l. Service of any fee request, whether contained in a responsive or affirmative pleading or filed as an independent request, must be noticed to all scheduled creditors prior to the expiration of the government bar date. Following the expiration of the government bar date, the fee request need only be noticed to the holders of allowed claims.

3. Policy Statement

The Court will not approve charges for time expended for work that is secretarial or administrative in nature (*e.g.*, sending facsimile transmissions, making copies, taking telephone messages, processing emails or notices from the Court and the like) even if performed by an attorney or paralegal.