

Guidance: Applications for Compensation by Debtors' Attorneys in Chapter 13 Cases

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MINNESOTA

This guidance was created by the United States Bankruptcy Court for the District of Minnesota to assist with the preparation and review of applications for compensation filed by a debtor's attorney in a chapter 13 case. Under Local Rule 2016-1(c), any application for compensation by a debtor's attorney in a chapter 13 case must comply with this guidance. Please note that this guidance may be updated at the discretion of the court. Attorneys are encouraged to always refer to the most updated version of the guidance.

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I. Generally (Local Form 2016-1)

Applications for compensation are governed by Federal Rules of Bankruptcy Procedure 2016(a) and 2002(a)(6) and 11 U.S.C. §§ 330, 331, and 503(b)(2). The fees described in paragraphs II, IV, and V below will be presumed to compensate a debtor's attorney in a chapter 13 case for a level of service to the debtor that, at a minimum, must include the services listed immediately below.

A chapter 13 debtor's attorney seeking the presumptively reasonable fees described herein may file an application for compensation that substantially conforms to Local Form 2016-1.

II. Presumptively Reasonable Fee for Required Services

An attorney who represents a debtor and performs the following services may request an order awarding compensation using Local Form 2016-1 if the amount of the requested compensation, including amounts received prepetition, does not exceed \$4,000.

A. Prepetition Services

The following prepetition services are included in the presumptively reasonable fee of \$4,000:

- (a) Meeting with the debtor to discuss and analyze the debtor's situation, goals, and objectives and to recommend a solution.
- (b) Counseling the debtor regarding the advisability of filing bankruptcy (as well as nonbankruptcy options) and answering the debtor's questions.
- (c) Explaining the terms of representation, filing fees, and plan payment requirements.
- (d) Performing due diligence tasks such as obtaining the debtor's credit report, checking PACER to confirm whether the debtor has previously filed a bankruptcy case, and verifying ownership of vehicles, real property, and other assets.
- (e) Consulting and communicating with the debtor to gather information and to inform the debtor of his/her responsibilities.
- (f) Timely preparing, revising, and finalizing the debtor's petition, plan, statements, schedules, and other forms and documents necessary for prosecuting the debtor's bankruptcy case.
- (g) Advising the debtor of the requirements to obtain prepetition credit counseling, to maintain appropriate insurance, and to file all income and other tax returns.
- (h) Advising the debtor about the steps necessary to obtain a discharge, including filing a statement regarding domestic support obligations and completing a financial management course.
- (i) Reviewing the completed petition, plan, statements, and schedules with the debtor and ensuring the debtor signs them.

B. Postpetition and preconfirmation

The following postpetition and preconfirmation services are included in the presumptively reasonable fee of \$4,000:

- (a) Advising the debtor of the requirement to attend the meeting of creditors, ensuring the debtor is prepared for the meeting, and notifying the debtor of the date, time, and place of the meeting. In the case of a joint filing, notifying both spouses that they must appear at the meeting.
- (b) Providing legal representation to the debtor at the meeting of creditors and attending the confirmation hearing, if necessary.
- (c) Ensuring bank statements and income and tax records are timely submitted to the trustee.
- (d) Initiating and responding to correspondence and calls to and from the trustee, the United States trustee, creditors, and other interested parties as necessary for the timely administration of the debtor's case.
- (e) Timely responding to objections to plan confirmation and, when necessary, preparing, filing, and serving a modified plan.
- (f) Corresponding with the debtor and creditors to ensure compliance with 11 U.S.C. § 362 as it pertains to wage garnishments, levied accounts, foreclosures, or any other matter.
- (g) Monitoring all incoming CM/ECF case information.
- (h) Timely preparing, filing, and serving any necessary amended statements and schedules and any change of address in accordance with information provided by the debtor.

C. Postconfirmation

The following postconfirmation services are included in the presumptively reasonable fee of \$4,000:

- (a) Evaluating proofs of claim, determining the necessity of objecting to filed claims, and advising the debtor accordingly.
- (b) Responding to the debtor's questions throughout the term of the plan or until either the case is dismissed or the court has authorized the debtor's attorney to withdraw from representation.
- (c) Assisting the debtor with the steps necessary to obtain a discharge, including filing a statement regarding domestic support obligations and completing a financial management course.
- (d) Monitoring all incoming CM/ECF case information.

III. Presumptively Reasonable Fee – Excluded Services

The presumptively reasonable fee of \$4,000 does not include the following services:

- (a) Representing the debtor in adversary proceedings, Federal Rule of Bankruptcy Procedure 2004 examinations, or postconfirmation hearings.
- (b) Preparing the following motions:
 - (1) to buy or sell real or personal property and/or to incur debt;
 - (2) objecting to improper or invalid proofs of claim;
 - (3) to avoid a lien;
 - (4) to modify a confirmed chapter 13 plan;
 - (5) to approve settlements;
 - (6) to deem a mortgage current;
 - (7) to approve sales or refinancing;
 - (8) to substitute collateral;
 - (9) for hardship discharge; and
- (c) Responding to motions:
 - (1) for relief from the automatic stay or for a valuation of property; and
 - (2) to dismiss (postconfirmation).

IV. Presumptively Reasonable Fees for Postconfirmation Modified Plans

An attorney who represents a debtor postconfirmation in serving and filing a modified plan may request an order awarding compensation using Local Form 2016-1 if the amount of the requested compensation does not exceed \$1,500 per application. If an attorney requests the presumptively reasonable fee under this paragraph, and the modified plan is filed in whole or in part to resolve a motion to dismiss or a motion for relief from the automatic stay, the attorney is not entitled to an additional presumptively reasonable fee under paragraph V.

V. Presumptively Reasonable Fees for Other Services

An attorney who represents a debtor in the following matters may request an order awarding compensation using Local Form 2016-1 if the amount of the requested compensation does not exceed \$1,000 per application:

- (a) resolving postconfirmation motion(s) for relief from the automatic stay;
- (b) resolving postconfirmation motion(s) to dismiss;
- (c) filing motion(s) for sale of real property;

- (d) filing motion(s) objecting to claims;
- (e) assisting the debtor in preparing and submitting required disclosures under 11 U.S.C. § 521(f)(4); and
- (f) assisting the debtor in responding to requests for information made in connection with an audit conducted under 28 U.S.C. § 586(f).

VI. Legal Costs and Expenses

In addition to the presumptively reasonable fees listed above, an attorney who represents a debtor in a chapter 13 case may apply for allowance of actual costs and expenses incurred, including photocopies, PACER fees, postage, long distance telephone charges, due diligence fees, credit counseling costs, and mileage on Local Form 2016-1.

VII. Objections to Presumptively Reasonable Fees and Orders

The use of Local Form 2016-1 does not limit the chapter 13 trustee, United States trustee, creditors, or any interested party from questioning the reasonableness of an attorney's fees. As indicated on Local Form 2016-1, there is a required 21-day response period. In addition, as required by Local Rule 2016-1(a), notice of Local Form 2016-1 must be sent to all creditors in accordance with Fed. R. Bankr. P. 2002(a)(6). Notice of Local Form 2016-1 may be sent with notice of a plan confirmation hearing or separate therefrom.

The court has the discretion to review the amount of fees paid to or agreed to be paid to a debtor's attorney or to enter appropriate orders allowing, disallowing, or reducing an attorney's fees or expenses. If an objection is filed, the court may require the attorney to file an application for compensation and an itemization of fees and costs that satisfy the requirements of Federal Rules of Bankruptcy Procedure 2016(a) and 2002(a)(6) and 11 U.S.C. §§ 330, 331, and 503(b)(2), as applicable, other than by using Local Form 2016-1. Otherwise, the court may enter an order on Local Form 2016-1 without further notice or a hearing.

An order regarding Local Form 2016-1 filed under paragraph II will generally be entered when the plan is confirmed. An order regarding Local Form 2016-1 filed under paragraph IV will generally be entered when the postconfirmation modification is approved. Finally, an order regarding Local Form 2016-1 filed under paragraph V may generally be entered at any time.

VIII. Legal Fees – Standard Application

The use of Local Form 2016-1 is optional. An attorney who declines to accept the presumptively reasonable fee for the minimum services listed may submit a separate application that conforms to the requirements in Federal Rules of Bankruptcy Procedure 2016(a) and 2002(a)(6) and 11 U.S.C. §§ 330, 331, and 503(b)(2), as applicable.

An attorney who elects to accept the presumptively reasonable fee for the services listed in paragraphs II, IV, and V may apply for additional compensation for services which exceed the scope of those paragraphs, by filing an application other than by using Local Form 2016-1. This application must conform to the requirements in Federal Rules of Bankruptcy Procedure 2016(a) and 2002(a)(6) and 11 U.S.C. §§ 330, 331, and 503(b)(2), as applicable.

IX. Non-Debtor's Attorney

This guidance does not apply to an application for compensation filed in a chapter 13 case by a non-debtor's attorney.