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2008 APR 17 AM 8:57

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AKRON

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)
) Administrative Order No. 08-04
ORDER GOVERNING PROCEDURES FOR)
ALLOWANCE OF ATTORNEYS' FEES IN)
CHAPTER 13 CASES FILED ON OR AFTER) JUDGE MARILYN SHEA-STONUM
APRIL 21, 2008)

In order to continue to ensure the efficient and just determination of Chapter 13 cases and proceedings, this Administrative Order is issued concerning the allowance of attorneys' fees in Chapter 13 cases. The fee schedules in this Administrative Order are responsive to the observations of the Chapter 13 Trustee and the request by practitioners that the Court revisit fees allowable in Chapter 13 cases without the necessity of filing an individual fee application. The fee schedules are also consistent with the Court's experience reviewing Chapter 13 fee applications over the past thirteen and a half years.¹ In addition, the fees represent a recognition of the additional costs to and time spent on each case by Chapter 13 practitioners due to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

¹ The use of these fee schedules is intended to encourage uniformity and minimize the time and expense of the fee application process. However, attorneys are free to seek compensation by submitting detailed billing information under the traditional lodestar format, pursuant to FED. R. BANKR. P. 2016, 11 U.S.C. § 330 and the Guidelines for Compensation and Expense Reimbursement of Professionals (the "Guidelines"), prescribed under Local Rule 2016-1.

The Court is aware of criticism equating a “no look” fee schedule contemplated by this Administrative Order with “price fixing.” Notwithstanding such criticism and as has been noted on the record, the Court has observed that, despite the longstanding procedure for obtaining “no look” fees, the legal community servicing this Court location is ripe with healthy competition. Moreover, the Court has observed that, while the majority of counsel for debtor(s) do avail themselves of the procedures allowing for a “no look” fee, they do not do so on an indiscriminate basis but, instead, only when warranted by the situation presented by their debtor-client(s) and often times at rates well below the maximum “no look” fee then allowed.

Unless otherwise ordered by the Court, this Administrative Order governs the compensation of attorneys in Chapter 13 cases filed in this Court on and after April 21, 2008.

1. Counsel representing Chapter 13 debtors shall be the attorney of record from the filing of the petition until the close or dismissal of the case (including disposition of motions to reinstate), unless relieved of representation by motion and court approval, or by another attorney filing a notice of substitution of counsel.

2. Subject to all the other provisions of this Administrative Order, if an executed copy of the Rights and Responsibilities of Chapter 13 Debtors and their Attorneys, *see* Exhibit A, has been filed with the Court, counsel may reach agreement with debtor(s) for an initial total fee of up to \$3,000 (the “Initial Total Fee”) and be paid the Initial Total Fee during the administration of the case, as set forth below, without the necessity of filing an individual case fee application. The Initial Total Fee shall be disclosed to the Court and is to be paid at four separate stages of the case as follows:

A. Provided that the filing of the petition is accompanied by all of the necessary schedules and disclosure information, then prior to the filing of the case, counsel may collect from the client **25%** of the Initial Total Fee (e.g., if the amount to which the client has agreed is \$3,000, then \$750 may be collected at this stage) to be applied against the Initial Total Fee. If the filing is not a complete filing, in the sense that not all of the schedules and disclosures accompany the petition, counsel’s fee at this stage is limited to **15%** (in the case of a \$3,000 fee, then \$450 may be collected at this stage).

- B. Thereafter, counsel will be entitled to a distribution of an additional **35%** (\$1,050 in the example of the \$3,000 fee) of the Initial Total Fee to be paid as an administrative claim upon and after confirmation of the Chapter 13 plan.² In a case that was commenced without all necessary schedules and disclosures, this Administrative Order assumes that a confirmation will not occur until all of those matters have been addressed to the satisfaction of the Chapter 13 Trustee. In such case, counsel also will be entitled to collect the **10%** percent for which such counsel would have been eligible at the outset of the case had the filing been complete.
- C. Concurrent with payment of all secured and priority claims that have been allowed in the case, counsel may receive an additional **20%** distribution of the Initial Total Fee (\$600 in the example of the \$3,000 fee) from the Chapter 13 Trustee.
- D. Thereafter, concurrent with the payment of general unsecured claims, counsel may receive a final distribution from the Chapter 13 Trustee of **20%** of the Initial Total Fee (\$600 in the example of the \$3,000 fee).

The fees referred to in this paragraph may be allowed by the Court in the order confirming the Chapter 13 plan of debtor(s) based upon the compensation statement signed by counsel and without the filing of a fee application pursuant to 11 U.S.C. § 330 and FED. R. BANKR. P. 2016(a).

3. Counsel for debtor(s) may request fees and expenses exceeding the amount set forth in paragraph 2 upon (A) formal application under FED. R. BANKR. P. 2016(a) and in accordance with the Guidelines, after notice and a hearing; or (B) application under paragraph 5 of this Administrative Order for designated matters. Allowance of fees and expenses greater than the amounts specified in paragraph 2 or 5 of this Administrative Order shall be by separate order of the Court. Counsel may not receive a post-petition retainer or payment other than as specified in this Administrative Order without leave of court.

4. As a guideline, the Court considers that counsel for debtor(s) will perform the following services in exchange for the Initial Total Fee allowed under paragraph 2:

- A. Having a personal meeting with debtor(s) to (i) review the financial situation of debtor(s) and (ii) counsel debtor(s) regarding filing under either Chapter 7 or Chapter 13 and alternatives to filing bankruptcy and (iii) make disclosures now required by BAPCPA, *see generally* 11 U.S.C. § 527;
- B. Participating in all conferences with debtor(s) and timely responding to inquiries of debtor(s), either by telephone or in writing;

² If counsel has not received any fees directly from his or her client(s) prior to the case filing as described in paragraph 2(A) of this Administrative Order, counsel will receive 60% of his or her fees at this stage as an administrative expense (\$1,800.00 in the example of a \$3,000.00 fee).

- C. Facilitating the credit counseling and personal financial management requirements imposed upon debtor(s) by BAPCPA. *see generally* 11 U.S.C. §§ 109(b) and 1328(g);
- D. Preparing the bankruptcy petition, schedules, statement of financial affairs, payment advices, “Means Test Form” (Official Form B22C) and the Chapter 13 plan, and assisting debtor(s) in understanding the nature of information that is to be provided and the good faith of the debtor(s) in assembling the information;
- E. Facilitating delivery of federal income tax returns or transcripts, proof of insurance (auto and home) and pay remittances to the Chapter 13 Trustee prior to the first date set for the meeting of creditors pursuant to 11 U.S.C. § 341 (the “341 Meeting”);
- F. Negotiating and communicating with priority and secured creditors, including the Internal Revenue Service;
- G. Representing debtor(s) at the initial 341 Meeting and any continued 341 Meeting;
- H. Responding to inquiries made by debtor(s) and/or the Chapter 13 Trustee in furtherance of the administration of the Chapter 13 case, in general, and the Chapter 13 plan, in particular;
- I. Preparing (and timely filing when necessary) documents and notices, including submissions based upon Chapter 13 Trustee recommendations, a suggestion of bankruptcy, routine objections to claims, amendments to schedules, voluntary dismissals and all case related correspondence;
- J. Responding to routine objections to plan confirmation, and when necessary, preparing, filing and serving an amended plan;
- K. Representing debtor(s) at the confirmation hearing, but not including an evidentiary hearing;
- L. Representing debtor(s) in connection with two particular Motions for Relief from Stay pursuant to 11 U.S.C. § 362 - one concerning the residence and one concerning a vehicle, but not including an evidentiary hearing on these matters;
- M. Representing debtor(s) on motions to avoid liens;
- N. Subject to the possible award of fees as a sanction against the respondent, representing debtor(s) on violations of the automatic stay and the post-discharge injunction;
- O. Representing debtor(s) on routine objections to claims;

- P. Representing debtor(s) on motions to dismiss, or, in the event that counsel has no objection, communicating with the Chapter 13 Trustee's office prior to the hearing on a motion to dismiss; and
- Q. Providing other legal services necessary for the administration of the case, including, but not limited to, continuing to assist debtor(s) by returning telephone calls, answering questions and reviewing and sending correspondence.

5. Notwithstanding any other provision of this Administrative Order, for certain services not within the guidelines of this Administrative Order for the Initial Total Fee, to encourage uniformity and consistency, and to minimize the time and expense of the fee application process, the Court will approve the following fees (the "Additional Post-Petition Fees") using the "Application for Additional Post-Petition Fees," (the "Application") attached to this Administrative Order as Exhibit B, provided that, prior to filing the Application, counsel for debtor(s) has obtained, and attached to the Application, a consent (the "Debtor Consent") of debtor(s) to pay such fees:

- A. For a post-confirmation plan modification, up to \$350;
- B. For a motion for authority to buy, sell, or refinance real property, up to \$350;
- C. For a motion to incur debt, such as the purchase or lease of a motor vehicle, up to \$200;
- D. For defense of additional motions for relief from stay, beyond those listed in paragraph 4, up to \$350;
- E. For motions for authority to settle insurance claims and/or use or distribute insurance proceeds, up to \$350; and
- F. For a motion to reinstate the automatic stay, each one up to \$200.

6. The Application referenced in paragraph 5 must be filed separately from the underlying pleadings for which the Additional Post-Petition Fees are sought. Unless and until agreed to in writing by debtor(s) and specifically permitted in an order approving the Additional Post-Petition Fees, counsel are not to collect any such additional fees directly from debtor(s). Once approved by the Court, the Chapter 13 Trustee is authorized to process the Additional Post-Petition Fees as an administrative expense which will be paid as soon as practicable subject to adequate protection payments in the Chapter 13 plan and the standard administration fee of the Chapter 13 Trustee.

7. The Debtor Consent may be included within or attached to an Application and must (A) be signed by debtor(s) and (B) set forth the following:

I we, _____, understand that my/our attorney, _____ has performed additional legal services on my/our behalf in this Chapter 13 case that were not initially contemplated by him/her or me/us. I/we further understand that the additional charge for said

legal services, for which Court approval is now being sought, is _____ (\$ _____) and I/we approve of payment of same. I/we also understand that, unless a written agreement to the contrary has been reached, the additional legal fees now being sought will be paid to my/our attorney through our Chapter 13 plan.

I/we have been informed that I/we have a right to oppose the payment of those fees by appearing in Court on a date to be determined by the Court. I/we have determined that there is no need to exercise that right.

8. If counsel elects not to seek fees under this Administrative Order, then counsel shall file a formal application under FED. R. BANKR. P. 2002 and 2016 and in accordance with the Guidelines.

9. With respect to novel, complex, or non-routine matters, counsel may file a fee application in compliance with FED. R. BANKR. P. 2002 and 2016, setting forth, at a minimum, each activity for which a fee is requested, the identity of the person performing the services, the billing rate of the person, the services performed, the date of the services and the amount of time expended. Such applications must be accompanied by evidence that each debtor-client was informed of and agreed to the hourly rate that could be charged in the event that non-routine issues developed in a case. The best evidence of such agreement is a counter-signed engagement letter.

10. In the event that the Chapter 13 case is either converted or dismissed without reinstatement before confirmation of a Chapter 13 plan, the Chapter 13 Trustee shall pay to counsel for debtor(s), absent a contrary order and to the extent funds are available, an administrative claim equal to 25% of the unpaid balance of the Initial Total Fee.

11. This Administrative Order does not limit the rights of debtor(s), the Chapter 13 Trustee, the U.S. Trustee, or any creditor to object to any fee request, even if the amount sought falls within the fee schedules listed, and even if debtor(s) had previously consented in writing to pay the requested fees. The provisions of this Administrative Order excusing counsel from the preparation of detailed fee applications is a privilege extended to counsel who attend to their obligations to their debtor clients. This Court has specifically requested the Chapter 13 Trustee to inform the Court of counsel whose level of service to their clients may not justify such a privilege. Such referrals by the Chapter 13 Trustee to this Court will be set for show cause hearings. Additionally, a hearing (at which counsel for debtor(s) shall appear) will be scheduled by this Court in all of the following situations:

- A. If counsel for debtor(s) is seeking an Initial Total Fee in excess of the amount set forth in paragraph 2 of this Administrative Order;
- B. If counsel for debtor(s) is seeking Additional Post-Petition Fees in excess of the amounts set forth in paragraph 5 of this Administrative Order; and
- C. If counsel for debtor(s) has failed to comply with the requirements of paragraph 7 of this Administrative Order regarding the Debtor Consent.

12. The Court retains the authority to reduce and/or order disgorgement of fees for cause, after notice and a hearing, including but not limited to the reduction of fees by \$200 for the failure of counsel for debtor(s) to file an original Declaration Re: Electronic Filing within five working days after the petition is filed as is required under General Order 02-2.

13. Once counsel for debtor(s) withdraws or is relieved of his/her duties by replacement counsel, the Chapter 13 Trustee is no longer authorized under this Administrative order to make a distribution to such outgoing counsel on account of any balance of the Initial Total Fee then due. If outgoing counsel for debtor(s) seeks payment on account of any balance of the Initial Total Fee still due, such counsel shall file separate motion specifically seeking such distribution.


Marilyn Shea-Stonum
U.S. Bankruptcy Judge

EXHIBIT A
TO ADMINISTRATIVE ORDER 08-04

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:

Case No.

Debtor(s)

Chapter 13

JUDGE MARILYN SHEA-STONUM

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

It is important for debtors who file a bankruptcy case under Chapter 13 to understand their rights and responsibilities. It is also important that debtors know what their attorney's responsibilities are and understand the importance of communicating with their attorney to make the case successful. Debtors should also know that they may expect certain services to be performed by their attorney. It is also important for debtors to know the costs of attorneys' fees through the life of the plan. In order to ensure that debtors and their attorney understand their rights and responsibilities in the bankruptcy process, the following guidelines provided by the Court are hereby agreed to by debtors and their counsel:

A. BEFORE THE CASE IS FILED:

DEBTOR agrees to:

1. Provide the attorney with accurate, and, to the best of debtor's ability, complete financial information.
2. Discuss with the attorney debtor's objectives in filing the case.
3. Keep all scheduled meetings and/or appointments, both with the attorney and with other parties to the case.
4. Respond to all attorney requests as soon as possible.
5. Provide the attorney with a working telephone number or other reliable method of communication.

ATTORNEY agrees to:

1. Personally meet with debtor to review debtor's assets, liabilities, income and expenses.
2. Counsel debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss with debtor both options as well as alternatives to filing for bankruptcy and answer debtor's questions.
3. Explain what payments will be made directly by debtor, such as mortgages and vehicle lease payments, and what payments will be made through the Chapter 13 plan.
4. Explain to debtor how, when and where to make the required Chapter 13 plan payments.
5. Explain to debtor how the attorney's fees and Chapter 13 Trustee's fees are paid, and provide an executed copy of this document to debtor.
6. Explain to debtor that the first plan payment must be made to the Chapter 13 Trustee not later than 30 days after the date that the plan is filed or the case is filed, whichever is earlier.
7. Advise debtor of the requirement to attend the § 341 Meeting of Creditors and to bring to the meeting a valid, unexpired picture identification and proof of social security number.
8. Advise debtor of the necessity of maintaining liability, collision and comprehensive insurance on vehicles owned or leased by debtor.
9. Advise debtor of the necessity of maintaining insurance on any real property that debtor may own.
10. Timely prepare and file debtor's petition, plan, statements, schedules, payment advices and "Means Test Form" (Official Form B22C) as well as any required amendments thereto.
11. Facilitate delivery of federal income tax returns or transcripts to the Chapter 13 Trustee prior to the first date set for the § 341 Meeting of Creditors.
12. Facilitate debtor's requirement to complete a pre-petition course in credit counseling.

B. AFTER THE CASE IS FILED:

DEBTOR agrees to:

1. Keep the Chapter 13 Trustee and the attorney informed as to debtor's current address and telephone number.
2. Timely make all Chapter 13 payments to the Chapter 13 Trustee.
3. Timely make all post-petition payments to the mortgage company and any other creditors that debtor has agreed to pay directly, and, if appropriate, maintain proper insurance coverage and pay post-petition tax obligations concerning the same in a timely fashion.
4. Cooperate with the attorney in preparing all pleadings and attending all hearings as required.
5. Prepare and file all delinquent federal, state, and local tax returns by not later than the first date set for the § 341 Meeting of Creditors.
6. Promptly inform the attorney of any wage garnishments or attachments of assets which occur or continue to occur after the filing of the Chapter 13 case.
7. Let the attorney know if debtor is sued at any time during the Chapter 13 case.
8. Contact the attorney regarding any changes in employment, increases or decreases in income or any other financial problems or changes.
9. Cooperate with the attorney and the Chapter 13 Trustee in timely producing any financial or supporting documents requested by the attorney or the Chapter 13 Trustee.
10. Contact the attorney to find out what approvals are required before buying, refinancing or selling real property, or before entering into any long-term loan or lease agreements.

ATTORNEY agrees to:

1. Continue to represent debtor through the conclusion of the Chapter 13 case, whether by dismissal or discharge.
2. Instruct debtor as to the date, time and location of the § 341 Meeting of Creditors, and appear at the § 341 Meeting of Creditors with debtor.
3. Respond to objections to plan confirmation, and, when necessary, prepare an amended plan.
4. Prepare, file and serve necessary plan modifications which may include suspending, decreasing or increasing plan payments.
5. Prepare, file and serve necessary amended statements and schedules in accordance with information provided by debtor.
6. Prepare, file and serve necessary motions to incur debt, or to buy, sell or refinance real property when appropriate.
7. Object to improper or invalid claims, if necessary, based upon documentation provided by debtor.
8. Be available to respond to debtor's questions throughout the pendency of the Chapter 13 case and the life of the plan.
9. Represent debtor in motions for relief from stay and motions to dismiss or convert.
10. Provide such other legal services as are necessary to the administration of the Chapter 13 case before the Bankruptcy Court, which include, but are not limited to, meeting with debtor, presenting appropriate legal pleadings and making necessary court appearances.
11. File an executed copy of this document with the Court, and provide executed copies of it to debtor and the Chapter 13 Trustee.
12. Facilitate debtor's requirement to complete a post-petition course in personal financial management.

C. ATTORNEY FEES:

The total fee charged debtor, exclusive of Court costs, is \$ _____ (the "Initial Total Fee"), of which \$ _____ was paid before the filing of the Chapter 13 petition (the "Initial Retainer"), with the balance of \$ _____ being paid by the Chapter 13 Trustee after confirmation of the Chapter 13 plan. The attorney may not demand or receive any additional fees directly from debtor, other than the Initial Retainer, unless a written agreement to the contrary has been reached and the Court so orders.

If the Chapter 13 case is either converted or dismissed before confirmation of a plan, absent contrary Court order, the Chapter 13 Trustee shall pay to the attorney for debtor, to the extent funds are available, an administrative claim equal to 25% of the unpaid balance of the Initial Total Fee that the debtor agreed to pay.

If the Initial Total Fee initially charged to debtor and ordered by the Court is not sufficient to compensate the attorney for legal services rendered in the case, the attorney agrees to apply to the Court for approval of additional fees. The following legal services are not covered by the Initial Total Fee initially charged debtor, and the attorney may apply to the Court for payment in the amount specified:

**Additional Fee, if any,
Debtor Agrees to Pay
Should Additional
Service be Performed****

**Description of Additional Legal Service Not Covered by Initial Total
Fee**

\$ _____

For a post-confirmation plan modification

\$ _____

For a motion for authority to buy, sell or refinance real property

\$ _____

For a motion to incur debt, such as the purchase or lease of a motor vehicle

\$ _____

For defense of additional motions to lift stay, beyond one concerning debtor's residence and one concerning a vehicle, which are included within Initial Total Fee, but not including an evidentiary hearing

\$ _____

For a motions for authority to settle insurance claims and/or to use or distribute insurance proceeds

\$ _____

For a motion to reinstate the automatic stay

*** Counsel requesting approval of fees in excess of the amounts stated in paragraph 2 or 5 of Administrative Order 08-04 must file a detailed fee application with the Court.

In addition, the attorney may need to provide legal services to debtor that are not covered by the Initial Total Fee. Such services include: (i) handling novel, complex or non-routine motions; (ii) oppositions to motions or objections to claims; (iii) representation in connection with an evidentiary hearing; or (iv) representation in adversary proceedings. These types of proceedings may be billed at reasonable hourly rates, and the attorney shall file a fee application in compliance with Bankruptcy Rules 2002 and 2016, setting forth, at a minimum, as to each activity for which a fee is requested, the identity of the person performing such services, the billing rate for such person, the services performed, the dates of the services and amount of time expended. The attorney's current hourly rate is \$_____.

All post-petition attorney fees shall be paid through the Chapter 13 plan unless otherwise specifically agreed to in writing and permitted by an order of the Court. If debtor disputes the legal services provided or the fees charged by the attorney, debtor may file an objection with the Court and that matter will be set for hearing. The attorney may move to withdraw as counsel, for cause shown, or debtor may discharge the attorney at any time.

The Court may, *sua sponte*, or upon motion of an interested party, disallow all or part of requested attorney's fees or may order the disgorgement of all or part of already collected fees if the Court finds that the attorney failed to provide services in accordance with the guidelines set forth in this document.

DATED: _____

DEBTOR

DATED: _____

DEBTOR

DATED: _____

ATTORNEY FOR DEBTOR(S)

EXHIBIT B
TO ADMINISTRATIVE ORDER 08-04

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:

Case No.

Debtor(s)

Chapter 13

JUDGE MARILYN SHEA-STONUM

APPLICATION FOR ADDITIONAL POST-PETITION FEES

1. In accordance with Administrative Order No. 08-04, the attorney for debtor(s) hereby requests additional compensation for services performed on behalf of debtor(s) as follows:

___ Post-confirmation plan modification
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

___ Motion for authority to buy, sell or refinance real property
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

___ Motion to incur additional debt (purchase/lease vehicle, purchase residence etc.)
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

___ Defense of additional motion for relief from stay, beyond one concerning debtor's residence and one concerning a vehicle, which are included in the Initial Total Fee
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

___ Motion for authority to settle insurance claims and/or to use of distribute insurance proceeds
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

___ Motion to reinstate the automatic stay
Date filed _____ Hearing Date(s) _____
Amount requested \$ _____

2. The undersigned represents to the Court that (a) the services indicated above have been completed and time records verifying the services have been kept, (b) the Debtor Consent (pursuant to ¶5 and ¶7 of Administrative Order 08-04) is being filed and served with this application and (c) additional compensation is requested in the amount of \$_____. Counsel further certifies that a copy of this application was served upon debtor(s), the Chapter 13 Trustee and the U.S. Trustee as set forth below.

3. Debtor(s), the Chapter 13 Trustee or any interested party may file a response or object to this application, within twenty days of service, with the Clerk of Courts of the United States Bankruptcy Court. A copy of the response or objection shall be served on debtor(s), the Chapter 13 Trustee and counsel for debtor(s). If no response or objection is timely filed, the Court may enter an order allowing the fees without a hearing.

Counsel for Debtor(s)
Signature Block