

Rule 2016-1

Compensation of Professionals

(a) Notice

Where an application exceeds One Thousand Dollars (\$1,000) notice of an Application For Award of Compensation for Services and Reimbursement of Expenses shall be on twenty-one (21) days notice to the Master Mailing List in accordance with LBR 2002-1. The notice shall include the following information:

- (1) The status of the applicant;
- (2) The date the applicant's employment by trustee, debtor in possession or creditors' committee was approved;
- (3) Whether the application is a final or interim application, and the sequential number of the application (i.e. 1st, 2nd etc.);
- (4) The amount of the compensation and reimbursement requested, stated separately;
- (5) The amount of compensation or reimbursement previously received or allowed, stated separately; and
- (6) The basis for the compensation and reimbursement.

(b) Application

- (1) Applications for award of compensation for services or reimbursement of expenses pursuant to § 330 of the Code shall be *prepared* as prescribed by the appropriate local form (*LF 2016*) and shall include as attachments the following:

- (A) Narrative (*LF 2016C*)

If the cumulative compensation applied for exceeds ten thousand (10,000) dollars, a narrative summary which describes the background of the case; the financial condition of the estate including comment as to profit and loss, amount of cash on hand or on deposit, amount of accrued unpaid administrative expenses and amount of unencumbered funds in the estate; the status of the case, and if the case is under Chapter 11, information concerning the status of the plan and disclosure statement, payment of quarterly fees to the United States trustee, and submission of monthly operating statements; a description of the tasks or projects for which compensation or reimbursement is sought; and

(B) Itemization of Services Rendered (*LF 2016B*)

- (i) Except where the fee is on a fixed or percentage basis, itemization of each service rendered in meaningful detail, including the identification of the person who rendered the service, the date the service was rendered and the project category of the service (i.e. cash collateral, relief from stay) in billing increments of one tenth of an hour, without combining or "lumping"; and
- (ii) If the cumulative application for compensation exceeds ten thousand (10,000) dollars or if required by the Court, the presentation of the itemization shall be by project category, with administrative matters and fee application preparation as separate categories.

(C) Itemization of Expenses

An itemization of expenses in meaningful detail to include the date incurred, description of the expense, person incurring the expense with special emphasis on extraordinary or unusual items.

- (2) A proposed ex parte order submitted to the Court pursuant to LBR 9013-1(c)(2) allowing compensation and reimbursement of expenses shall ~~conform to~~ *be prepared as prescribed by the appropriate local form (LF 2016D)*.
- (3) The applicant shall serve a copy of the application and attachments with the notice on the United States trustee, the trustee or debtor in possession, debtor and any creditors' committee appointed pursuant to § 1102 of the Code.

(c) **Award and Payment**

Payments for compensation or reimbursement from the estate as an administrative expense pursuant to § 330 of the Code shall be made only after award and order of the Court.

(d) **Exception in Chapter 13 Case**

In a Chapter 13 case, an attorney may choose to be compensated on either an hourly basis or on an agreed flat fee basis. If the attorney chooses to be compensated on an hourly basis, compliance with sub-paragraph (a), (b) and (c) of this rule is required. An attorney who chooses to be compensated on an agreed flat fee basis need only comply with subparagraph (e) of this rule.

(e) **Agreed Flat Fee**

- (1) The Agreed Flat Fee shall be supported by a Flat Fee Agreement *prepared* as prescribed by the appropriate local form (*LF 2016E*), between the debtor and the attorney, may not exceed ~~\$3,000~~ **\$4,000** in a consumer case or ~~\$4,000~~ **\$5,000** in a business case as defined in § 1304(a) of the Code, and shall be compensation for all services and associated expenses excluding filing fees and credit counseling/education program fees in connection with the case that are ordinary, necessary and reasonable foreseeable and which includes the following:
- (A) Preparation and filing of the petition, Schedules, and Statement of Affairs, the Chapter 13 Plan and associated local forms, along with modifications, amendments and supplements, Current Monthly Income and Calculation of Commitment Period (Official Form 122C-1) and Disposable Income (Official Form 122C-2), filing certification of pre-filing counseling, filing evidence of income from employment as required by statute, and filing certification of pre-discharge education; and preparing and filing prior to confirmation certification that the debtor is current in all post-petition domestic support obligations, and has filed all applicable and required federal, state and local tax returns, and, prior to discharge, certification regarding domestic support obligations as provided for in § 1328(a) of the Code;
 - (B) Representation at the Meeting of Creditors or Examinations held pursuant to FRBP 2004; filing motion and statement in support of confirmation; and appearance at initial confirmation hearings, if required;
 - (C) Responding and resolving common and foreseeable issues and objections, including but not limited to objections to confirmation; motions for relief from the automatic stay; assumption or rejection of unexpired leases or executory contracts; valuation of collateral; pre-confirmation adequate protection payments; objection to proofs of claim; tax refunds and bonuses, license reinstatement, and post petition repossessions and garnishments, requests from the office of the United States trustee, and routine motions to dismiss;
 - (D) In business cases, assisting the debtor in the preparation and filing of required financial reports;
 - (E) Filing with the court or making available to the requesting party as provided for in LBR 4002-1 federal income returns or amendments required under applicable law for each tax year while the case is pending pursuant to § 521(f) of the Code.

(F) If requested, filing with the court or making available to the requesting party as provided for in LBR 4002-1 federal income returns or amendments required under applicable law for each tax year while the case is pending pursuant to 11 USC 521(f).

(2) Flat Fee Agreement

The attorney for the debtor shall submit a copy of the Flat Fee agreement entered into with the debtor to the Chapter 13 trustee prior to the meeting of creditors, as well as a completed copy of the Statement of Money or Property Received or Promised in Connection With This Case Other Than by Application or a Plan (LF 2016A). The Flat Fee agreement shall be *prepared* as prescribed by the appropriate local form (*LF 2016E*).

(3) Approval of Agreed Flat Fee

Approval of the Agreed Flat Fee shall be included in the order confirming plan, and will be sufficient authority for the attorney to transfer any monies of the debtor held in the attorney's trust account to the attorney and for the trustee to pay any remaining amount to the attorney as directed by the plan.

(4) Supplemental Application

(A) The attorney may submit a supplemental application for compensation for services not included in the agreed flat fee as set out in sub-paragraph (e)(2) of this rule, whether or not the services were performed before or after confirmation. In the case of a supplemental application the attorney shall comply with sub-paragraph (a), (b), and (c) of this rule as to such additional services. Any such supplemental application shall include a certification by the attorney that the compensation applied for ~~is~~ *was* not *reasonably* ~~reasonable~~ foreseeable with an explanation as to why it was not foreseeable and is outside that contemplated by the agreed flat fee as set out in sub-paragraph (c)(2) of this rule.

(b) Supplemental fee applications must be filed with the court prior to completion of the plan.

(f) **Hold Back of Estimated or Applied for Attorney Fees as Projected Costs of Administration**

Following confirmation, the trustee is authorized to hold back estimated attorney fees or attorney fees for which an application has been filed as projected costs of administration in the same manner as if they had been allowed, but may pay them out only as allowed by a separate order of the court.

Related Provisions

FRBP 2014	Employment of Professional Persons
FRBP 2016	Compensation for Services
11 USC 326	Limitation on Trustee's Compensation
11 USC 327	Employment of Professional Persons
11 USC 328	Limitation on Compensation
11 USC 329	Debtor's Transactions with Attorneys
11 USC 330	Compensation of Officers
11 USC 331	Interim Compensation
11 USC 503	Allowance of Administrative Expenses
11 USC 504	Compensation for Services

LBR 2016-1

~~DECEMBER 1, 2015~~

Rule 2083-1

Chapter 13 - General

(a) Applicability

This rule shall apply only to cases under Chapter 13 of the Bankruptcy Code.

(b) Filing the Plan and Other Documents

- (1) The debtor shall file the following documents separately using the prescribed local forms:
 - (A) Chapter 13 Plan (LF 2083)
 - (B) Plan Payment Declaration (LF 2083A)
 - (C) Plan Funding Analysis (LF 2083B)
 - (D) Liquidation Analysis (LF 2083C)
- (2) A Certificate of Debtor(s) Regarding Payments to and Disbursements by the Chapter 13 Trustee (LF 2083-1F) shall be filed as a separate document.

(c) Mailing of Plan to Parties in Interest

A copy of the plan required to be provided to all creditors pursuant to FRBP 3015(d) shall be as directed by the Clerk of Court. Notice of modifications and copies required to be sent to all creditors shall be provided by the party making the modification in accordance with subsection ~~(j)~~ ~~(k)~~ of this rule.

(d) Valuation of Security, Determination of Extent of Lien, and Lien Avoidance

- (1) Valuation of claims secured by a lien on property in which the estate has an interest shall be by a separate motion pursuant to LBR 3012-1. The order valuing the claim voids the lien to the extent of the unsecured portion of the claim pursuant to § 506(d) of the Code. In the event of dismissal of the case prior to discharge, this voided lien will be reinstated pursuant to § 349(b)(1)(C) of the Code unless otherwise ordered.
- (2) All actions to determine the validity, priority or, other than (1) above, the extent of a lien, shall be made by Adversary Proceeding, however, such relief may also be sought in an objection to allowance of claim pursuant to LBR 3007-1.
- (3) Actions to avoid judicial or non-possessory non-purchase money security interests under § 522(f) of the Code shall be by a separate motion pursuant to LBR 4003-2.

(e) Delinquent Tax Returns

A statement as to whether or not the debtor is delinquent in the filing of any tax return shall be included in the plan as well as a statement as to when any delinquencies in filing will be cured.

(f) Treatment of Secured Creditors Secured by Real Property

- (1) If at the time of the filing a petition for relief, a delinquency exists on any payments for debt secured by real property, then all payments, both current and delinquent, for such debt shall be paid through the office of the Chapter 13 trustee.
- (2) If during the pendency of the plan a debt secured by real property falls into arrearage, then the plan may be modified pursuant to subsection (k \) of this rule to require payments, both current and delinquent, to be paid through the office of the Chapter 13 trustee.
- (3) If during the pendency of the plan arrearages are brought current, then the plan may be modified to allow for payments to be made directly to the creditor by the debtor.

(g) Funding of Plan by Sales

- (1) If the debtor proposes to partially fund the plan through the sale of property of the estate, then the debtor must also file a marketing plan with the plan. The marketing plan shall include:
 - (A) A description of the property to be sold;
 - (B) Identification of all lien holders and the amount of each lien;
 - (C) If a broker is to be employed, the name of the broker and when the property was or will be listed;
 - (D) The terms of the broker's agreement;
 - (E) The price sought for the property;
 - (F) The method used in arriving at the value of the property; and
 - (G) The time frame, including mileposts where appropriate, during which the property will be marketed.
- (2) The debtor shall provide quarterly status reports to the Chapter 13 trustee.

(h) Challenges to Eligibility of Debtor

Challenges to the eligibility of the debtor should be initiated at the earliest possible time in the case. Such challenges may be made by fourteen (14) days' notice and hearing to the Master Mailing List pursuant to LBR 2002-1.

~~(i) Objections to Confirmation~~

~~In order to be timely, objections to confirmation of a plan shall be filed and served on the Chapter 13 trustee and the debtor and debtor's attorney no later than seven (7) days prior to the hearing on confirmation.~~

(i j) Confirmation

- (1) Upon resolution of all objections, the trustee shall file as soon as practicable an unsworn statement under penalty of perjury stating the plan is feasible and satisfies the requirements of §1325(a)(1),(4) and (5) of the Code.
- (2) The court will prepare the confirmation order.

(j k) Modification of Plans

- (1) Modification Prior to Confirmation

Modifications made pursuant to § 1323 of the Code shall be on twenty-one (21) days' notice and hearing in accordance with LBR 2002-1. A plan shall not be confirmed until the time to object to any such modification has expired and all objections resolved.

- (2) Modification After Confirmation

(A) A modification proposed by any entity other than the debtor shall be on twenty-one (21) days' notice and hearing to any adversely affected party, the Chapter 13 trustee, debtor and debtor's attorney. The modification shall become effective upon the expiration of the time to file objections, if there are no objections, or upon resolution of all objections made.

(B) A modification proposed by the debtor shall be on twenty-one (21) days' notice and hearing to the Chapter 13 trustee and any adversely affected party, and if the modification provides for payment of a post-petition debt, the holder of such debt. The modification shall become conditionally effective upon the filing and service of the notice. The modification shall become permanent upon the expiration of the time to file objections if no objections are timely made or upon resolution of all objections made.

- (3) Effect of Disallowance of Modifications

If a proposed modification is disallowed, the plan in effect immediately prior to such modification shall be the plan, and debtor shall be responsible for curing any default occurring during the period of conditional modification.

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