

Rule 2016-1

Compensation of Professionals

(a) Notice

Where an application exceeds \$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 \$10,000, 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 \$10,000 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 reasonably 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; objections 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) If requested, filing with the court or making available to the requesting party as provided for in LBR 4002-1 federal income tax returns or amendments required under applicable law for each tax year while the case is pending pursuant to 11 USC § 521(f) of the Code.

(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

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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.

LBR 2083-1

~~DECEMBER 1, 2015~~ **AUGUST 1, 2018**

(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) 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.

(4) Modification by Stipulation Between Chapter 13 Trustee and Debtor

The Chapter 13 trustee and the debtor may stipulate to a modification before or after confirmation where no parties are adversely affected. Such modifications shall be effective upon the filing of the stipulation.

(5) The debtor shall file an amended Plan Funding Analysis (LF 2083B) upon the making or proposing of a modification pursuant to subparagraph (j k)(1) or (2) of this rule.

(k) **Payments To and Distributions By Chapter 13 Trustee**

(1) Payments to Chapter 13 Trustee

The debtor shall make all pre- and post-confirmation payments on obligations for leases of personal property and obligations owed to a creditor that has a security interest in personal property to the Chapter 13 trustee including all obligations provided by § 1326(a)(1) of the Code, as well as obligations secured by real property as required by sub-paragraph (f) of the rule, unless otherwise ordered by the court.

(2) Filing Fee Installments

Installment payments of filing fees where allowed shall be paid directly to the Clerk, however, if such fees are received by the Chapter 13 trustee, the Chapter 13 trustee may return them to the payor or deliver them to the Clerk without further order of the Court.

(3) Distributions by Chapter 13 Trustee Based on Modifications

Distributions may be made by the Chapter 13 trustee in accordance with a conditional modification until such modification becomes permanent, is disallowed or otherwise ordered, and the Chapter 13 trustee is served with a copy of such order by the objecting party.

(4) Post-petition Claims

Proofs of claim filed pursuant to § 1305(a)(1) of the Code for post-petition tax claims may be paid without a modification to the plan, however, proofs of claim filed pursuant to § 1305(a)(2) of the Code for consumer debt may only be paid if a modification to the plan so provides.

(5) Disposition of Funds on Conversion or Dismissal

On the conversion or dismissal of a case, the Chapter 13 trustee shall, as soon as practicable, disburse any remaining funds in accordance with § 1326 of the Code. If a motion is filed pursuant to § 348(f)(2) of the Code and the trustee is served a copy thereof prior to disbursement, then the Chapter 13 trustee shall not further disburse until resolution of the motion.

(6) Pre-Confirmation Distributions

The Chapter 13 trustee is authorized to make distributions prior to the confirmation of the plan on obligations for leases of personal property, and on obligations secured by personal or real property. Such pre-confirmation distributions shall be made in the sequence and in the amount set forth in the debtor's plan. If the Trustee has insufficient funds on hand to make the distributions to all classes, the funds will be distributed as provided in the plan to the extent the funds are available. Claims within a particular class which cannot be paid the proposed distribution shall be paid a pro rata share of the funds available. Upon confirmation of the plan, payments will be made as set forth in the plan.

(l m) Post-confirmation Sale of Property by Debtor

If the debtor proposes to sell property pursuant to § 363 of the Code, then, unless the property is fully exempt or is valued in an amount of \$7,500 or less, the debtor shall promptly provide to the Chapter 13 trustee an amended statement of income and expenses as prescribed by the appropriate official form projecting any changes occasioned by the sale and a good faith estimate of closing costs or other similar document and any other documents requested by the Chapter 13 trustee relating to such sale.

(m n) Incurring Credit by Debtor During the Pendency of the Plan

If the debtor proposes to purchase any property involving a credit transaction that may potentially affect the debtor's ability to satisfy the plan, the debtor, in addition to obtaining the Chapter 13 trustee's approval if practicable, shall transmit to the Chapter 13 trustee an amended statement of income and expense as prescribed by the appropriate official form projecting any changes caused by the purchase, and if the transaction involves real estate, a good faith estimate of closing costs or other similar document and any other documents requested by the Chapter 13 trustee.

(n o) Debtors Engaged in Business

Debtors engaged in business shall comply with the applicable provisions of LBR 3016-1(e) and 28 USC 959(b), and serve a copy of the Monthly Financial Report on the trustee.

(o p) Income Directive

- (1) The Chapter 13 trustee may, at any time, issue a Trustee's Income Directive or present an ex-parte order, based upon a proposed or confirmed plan requiring any entity from whom the debtor receives money to pay all or part of such income to the Chapter 13 trustee.
- (2) In any case in which a debtor desires to make plan payments directly to the trustee in lieu of an income directive, the debtor may do so only upon the entry of an order of the court authorizing such direct payments. Such an order will be entered only:
 - (A) After filing of a motion for an order authorizing the debtor to make the plan payments directly to the trustee; and
 - (B) After seven (7) days' notice and hearing to the trustee; and
 - (C) Upon a showing of cause.

(p q) Motion to Dismiss or Convert Case

- (1) A party in interest desiring that a case be dismissed or converted shall give twenty-one (21) days' notice and hearing to the Master Mailing List.
- (2) The Chapter 13 trustee may move the Court for an order of dismissal or conversion on seven (7) days' notice to the debtor and debtor's attorney and any entity that has filed and served the Chapter 13 trustee with a request to receive such notice for failure to timely file schedules or other required documents or attend the meeting of creditors and on twenty-one (21) days' notice for failure to timely make payments required by § 1326(a) of the Code or pursuant to a confirmed plan.
- (3) A debtor shall serve a copy of a request for voluntary dismissal on the trustee.

(g x) Minimum Plan Payments

A plan that proposes payments of less than \$50 per month to be paid to the Chapter 13 trustee shall be supported by an affidavit or unsworn declaration under penalty of perjury explaining the necessity of such minimum payments.

(r f) Domestic Support Obligation Certificate

Upon completion of all payments by the debtor under the plan, each debtor shall file a Domestic Support Obligation Certificate as prescribed by the appropriate form (Official Form 2830).

Related Provisions

FRBP 1006	Filing Fees
FRBP 1007	Lists, Schedules, Statements and Other Documents; Time Limits
FRBP 1017	Dismissal or Conversion of Case; Suspension
FRBP 1019	Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case
FRBP 2002	Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
FRBP 2016	Compensation for Services Rendered and Reimbursement of Expenses
FRBP 3007	Objection to Claims
FRBP 3012	Valuation of Security
FRBP 3015	Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case
FRBP 6004	Use, Sale, or Lease of Estate Property
FRBP 9013	Motions; Form and Service
FRBP 9014	Contested Matters
LBR 2016-1	Compensation of Professionals
LBR 3016-1	Chapter 11 Pre-Confirmation Requirements
LBR 4001-2	Cash Collateral
LBR 4003-2	Lien Avoidance
LBR 9011-1	Attorney Duties
11 USC 348	Effect of Conversion
11 USC 349	Effect of Dismissal
11 USC 506	Determination of Secured Status
11 USC 522(f)	Avoidance of Liens
11 USC 1304	Debtor Engaged in Business
11 USC 1305	Filing and allowance of post-petition claims
11 USC 1307	Conversion or Dismissal
11 USC 1323	Modification before confirmation
11 USC 1325(c)	Income Directive
11 USC 1326	Payments
11 USC 1329	Modification of plan after confirmation
28 USC 959	Trustees and receivers suable; Management; State Laws

LBR 2083-1

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