

## **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 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 11 USC 330 shall be as prescribed by the appropriate local form and shall include as attachments the following:

##### **(A) Narrative**

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**

- (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 allowing compensation and reimbursement of expenses shall be as prescribed by the appropriate local form and shall be supported by a statement of the reviewing trustee that the application was reviewed and the amounts to which the reviewing trustee raises no objection.

(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 11 USC 1102.

**(c) Award and Payment**

Payments for compensation or reimbursement from the estate as an administrative expense pursuant to 11 USC 330 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 as prescribed by the appropriate local form, between the debtor and the attorney, may not exceed ~~\$2,000~~ \$2,500 in a consumer case or ~~\$3,000~~ \$3,500 in a business case as defined in 11 USC 1304(a), and shall be compensation for all services and associated expenses excluding filing fees and credit counseling/education program fees in connection

with the case through confirmation of the plan or thirty (30) days following the expiration of the claims bar date, whichever is later, that are ordinary, necessary and reasonably foreseeable and which shall include the following without limitation:

- (A) preparation and filing of the petition, Schedules, and Statement of Affairs, the Chapter 13 Plan and associated local forms, along with modifications, and amendments and supplements, Current Monthly Income and Calculation of Commitment Period and Disposable Income (means test Form B22C (Chapter 13)), 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 11 USC 1328(a);
- (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 Chapter 13 trustee copies of the debtors pay stubs for the sixty (60) day period immediately prior to the filing of the petition, and providing to the trustee tax returns or other records if requested by the trustee.
- (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).

*Note : This change would increase the floor for use of the Flat Fee by \$500 for both business and non-business cases. The flat fee would not include representation in Adversary Proceedings, but be limited to matters in the main case. Changes to the rule would include the various requirements imposed by BAPCPA, including requests from the office of the United States trustee, such as random audits .*

(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 as prescribed by the appropriate local form.

(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 was not reasonably 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. ~~An order allowing supplemental compensation shall either be endorsed by the debtor, or on twenty (20) days notice and hearing to the debtor.~~

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

*Note: This change would require that supplemental fee applications contain a statement that the additional services were not reasonably foreseeable and why. It would also require that any supplemental applications be filed prior to the 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

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