

## **RULE 2016-1. COMPENSATION OF DEBTOR'S ATTORNEY IN CHAPTER 13 CASES**

**(a) General Provisions.** In accordance with 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016(b), the attorney for a chapter 13 debtor must file a Disclosure of Compensation of Attorney for Debtor, utilizing Bankruptcy Form B 2030, available on the court's website, [www.tneb.uscourts.gov](http://www.tneb.uscourts.gov), with such modifications as may be appropriate. As required by the form, the attorney must set forth the attorney's fee agreement with the debtor for the chapter 13 case, including whether the agreed fee is a flat fee as authorized in subdivision (b) of this rule or a fee to be calculated under the lodestar method by multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended as authorized in subdivision (c) of this rule. If the fee is to be calculated by lodestar, the attorney must disclose the hourly rate for the attorney and for any other professional in the attorney's office who is expected to work on the case. Under 11 U.S.C. § 503(b)(2), amounts awarded by the court to the attorney for the chapter 13 debtor constitute administrative expenses.

### **(b) Flat Fee Award.**

- (1) *Definition and Services.* Without the filing of an itemized statement under Fed. R. Bankr. P. 2016(a), a debtor's attorney in a chapter 13 case may request a reasonable flat fee for representing the interests of the debtor in connection with the case in an amount not to exceed \$4,500. The flat fee request must be based on the attorney's good faith estimate of the services to be rendered in the case, the attorney's hourly rate for such services, and the other factors listed in 11 U.S.C. § 330(a)(3) and (4). In setting the fee, the attorney should also consider the length of the plan, whether secured creditors will be paid, the amount of total plan payments, and the expected dividend to unsecured creditors. While it is contemplated that a flat fee award will be for all compensation and expenses for representing the interests of the debtor in the chapter 13 case, the debtor's attorney may provide in the Disclosure of Compensation that the flat fee does not include any fees and expenses incurred for—
  - (i) Representing the debtor in an adversary proceeding under Fed. R. Bankr. P. 7001;
  - (ii) Representing the debtor on a motion for contempt or sanctions;
  - (iii) Utilizing an expert witness; or
  - (iv) Representing the debtor in connection with an appeal.
- (2) *Procedure.* Any request for a flat fee must be set forth in the chapter 13 plan in the section addressing the payment of administrative expenses. A party in interest may file an objection to the requested flat fee in the manner for objecting to the plan under E.D. Tenn. LBR 3015-3(a). Absent an objection, the fee may generally be approved in the order of confirmation without further notice or a hearing. The court may, sua sponte, require a hearing on any flat fee request.
- (3) *Supplemental Fee Requests.* If, after confirmation, the debtor's attorney seeks compensation for services or reimbursement for expenses excluded from the flat fee as permitted in paragraph (1) of this subdivision, the attorney must file a fee application conforming to Fed. R. Bankr. P. 2016(a) for those services.

The application must include (1) a statement that the services for which the attorney is seeking supplemental compensation were specifically excluded from the services included in the flat fee award and (2) an itemized statement supported by contemporaneous time and expense records related to the services for which the supplemental fees are requested. To the extent that the fee arrangement for such supplemental services was not addressed in the attorney's filed Disclosure of Compensation, the attorney must file an amended Disclosure. The attorney must serve the application or a summary thereof, along with the proposed order, on the debtor and the trustee, and if the amount sought exceeds \$1,000, on all creditors and parties in interest. The application must state the effect, if any, of the requested fee on the dividend to be paid unsecured creditors under the debtor's plan.

**(c) Lodestar Fee Award.** In any case in which a chapter 13 debtor's attorney seeks compensation for services or reimbursement for expenses other than the flat fee authorized in subdivision (b) of this rule, the attorney must file a fee application conforming to Fed. R. Bankr. P. 2016(a). The application must include an itemized statement and be supported by contemporaneous time and expense records. The applicant must serve the application or a summary thereof, along with the proposed order, on the debtor and the trustee, and if the amount sought exceeds \$1,000, on all creditors and parties in interest. The application must state the effect, if any, of the requested fee on the dividend to be paid unsecured creditors under the debtor's plan.

**(d) Debtor's Attorney Fee in Cases Dismissed or Converted Before Confirmation.**

- (1) *Award of Fee.* In the event a chapter 13 case is dismissed or converted before plan confirmation, the attorney for the debtor may be awarded a fee in the amount of \$1,750 if provided for in the tendered dismissal or conversion order, absent a request filed by the attorney for a different amount that includes the reason therefor or an objection filed by the trustee or the debtor within 14 days after entry of the dismissal or conversion order. Notwithstanding the foregoing, the court may decide not to include a fee award in the order dismissing or converting the case and instead enter an order setting a hearing to review and determine any amount to be awarded.
- (2) *Payment of Fee.* The awarded fee is to be paid from any prepetition retainer held by the debtor's attorney, with the balance paid by the chapter 13 trustee from any plan payments on hand, after payment of any unpaid filing fee. In the event there are any other unpaid administrative expenses awarded under 11 U.S.C. § 503(b), the trustee must pay these expenses along with the balance of the fee award on a pro-rata basis from plan payments in the trustee's possession.
- (3) *Retainer.* If the attorney for the debtor has received a retainer and either a fee was not awarded as provided in paragraph (1) or the retainer exceeds the fee award, the attorney for the debtor must apply the unawarded retainer or retainer balance toward payment of the filing fee if the chapter 13 trustee does not have sufficient funds on hand from plan payments to pay the fee. In the event a retainer balance remains after payment of the filing fee, within 30 days from entry of the order dismissing or converting the case, the attorney for the debtor

must amend the previously filed Disclosure of Compensation to evidence refund of the retainer balance or any new agreement for services to be provided in a converted case.

**(e) Debtor's Attorney Fee in Cases in Which Attorney Does Not Complete Representation.** If an attorney has been awarded a flat fee under subdivision (b) and for any reason the attorney's representation ends before the case is closed, the court, either sua sponte or on request of a party, may order disgorgement of fees received but not earned and vacate any balance of the award that has not been received. A flat fee award to the initial attorney in the case does not prohibit a successor attorney from being awarded compensation for providing the necessary services to complete representation of the debtor in the case. A successor attorney may request compensation on either a flat fee basis pursuant to subdivision (b)(1) or by the lodestar method pursuant to subdivision (c). The request may be made by application or included in a motion to modify the confirmed plan. Unless provided for in a modified plan, any application for compensation by a successor attorney must state the effect, if any, of the requested fee on the dividend to be paid unsecured creditors under the debtor's plan and be served on the debtor and trustee, as well as all creditors if the amount exceeds \$1,000.