

(a) Applicability.**CHAPTER 13 REPRESENTATION AND COMPENSATION**

Attorneys representing debtors in cases under chapter 13 of the Bankruptcy Code may elect to establish terms of compensation for their services under the requirements and conditions of this rule. If they elect not to do so, the terms and conditions of employment shall be as established by appropriate written agreement, and compensation shall be subject to the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including but not limited to 11 U.S.C. § 330(a)(4)(B).

(b) Presumptive fee.

If an attorney elects to establish compensation for representation of debtors in chapter 13 cases under this rule, and upon compliance with the terms and conditions of this rule, the attorney shall be allowed a fixed fee not to exceed the amount provided in a General Order of this court for all services rendered or to be rendered throughout the duration of the chapter 13 case, and inclusive of all costs and expenses with the exception of filing fees. This fixed fee shall be presumptively reasonable and allowable under 11 U.S.C. § 330(a)(4)(B) without itemization of time or other submission. The chapter 13 plan may make provision for the payment of any portion of such fee not paid by the debtor(s) prior to the filing of the petition.

(1) Inasmuch as such fee's reasonableness is presumptive only, the court may, in its discretion or upon request of the debtor, the chapter 13 trustee, the U.S. Trustee, a creditor or party in interest, conduct a hearing to consider the reasonableness of such fee under all the facts and circumstances of the case. The court may, as a result of such hearing, reduce or modify such fee.

(c) Required use of model retention agreement.

An attorney seeking to establish presumptive compensation under this rule shall execute and be bound by the Model Retention Agreement in the form required by the court. Such attorney shall also obtain the signatures of the debtor(s) to the Model Retention Agreement. A copy of the fully executed Model Retention Agreement shall be attached to the statement filed by the attorney under Fed. R. Bankr. P. 2016(b).

(d) Applications for fees in addition to presumptive amount.

In extraordinary circumstances, an attorney receiving presumptive compensation under this rule may seek additional fees through an application for allowance of additional compensation and, if necessary, a motion to modify a confirmed plan.

Such an application shall be set for a hearing upon notice to the debtor(s), the chapter 13 trustee, the U.S. Trustee, and all creditors and parties in interest. Such an application shall be accompanied by an affidavit justifying the request and including an itemization of all services rendered by the attorney, from the initiation of representation of the debtor(s) through the date of application, supporting the total amount of compensation sought. This affidavit shall be filed with the court and served on the debtor(s), the chapter 13 trustee, and the U.S. Trustee.

(e) Applications for attorney's fees in cases dismissed prior to confirmation.

In the event the debtor(s) case is dismissed prior to confirmation, then attorney's fees awarded pursuant to 11 U.S.C. § 330(a)(4)(B) must be reasonable. In those cases wherein the attorney for the debtor(s) is seeking to be paid attorney's fees from funds received by the chapter 13 trustee from the debtor(s) prior to dismissal and still in trustee's possession, the attorney for the debtor(s) shall timely file a detailed fee application within 14 days of the date the case was dismissed with notice to the debtor(s) and the trustee. The application must state that debtor(s) have been advised of the attorney's intent to seek payment on their attorney's fees from funds being held by the trustee that would otherwise be refunded to the debtor(s) pursuant to 11 U.S.C. § 1326(a)(2) and that the debtor(s) have the right to object to the allowance of some or all of the fees requested. Failure of debtor(s)' attorney to timely file a fee application will result in funds being refunded to the debtor(s).

RELATED AUTHORITY

11 U.S.C. § 329, 330,
503(b)(2)
Fed. R. Bankr. P. 2016
District of Idaho General Order No. 291

Advisory Committee Notes:

This rule provides an alternative fee approach to counsel representing chapter 13 debtors. Ordinarily, counsel representing debtors in chapter 13 cases would be required to support fees paid pre-petition or through a confirmed plan by providing itemization on a time and hour basis. This court has previously as a matter of practice waived, in most cases, the requirement of itemization of services for counsel charging a fee for services in the case not exceeding \$1,000.00. *See generally In re Gebert*, 99.4 I.B.C.R. 137, 138 (Bankr. D. Idaho 1999).

The court wishes to ensure reasonable and adequate compensation is paid chapter 13 debtors' counsel, to encourage full performance of duties by such counsel throughout the duration of the case as debtors' needs and changed circumstances require; and to eliminate the expense of serial requests for incremental fees through modified plans. It has elected to do so through a significantly higher presumptively reasonable fee, but conditions its availability to those cases where debtors and their counsel agree to a standard form of retention agreement outlining the mutual duties and responsibilities of attorney and client.

Under this rule, counsel may charge and receive a fixed fee not to exceed the amount provided in a General Order of this court for all services rendered or to be rendered in the chapter 13 case. Use of this alternative requires that the attorney and the client execute the Model Retention Agreement, which may be found in Appendix II of the Local Bankruptcy Rules. A copy of the executed Model Retention Agreement must be attached to counsel's Rule 2016(b) statement.

The contemplation is that this compensation is a fixed fee for all services in the case, and not a base fee that in ordinary cases would be subject to post-confirmation requests for additional fees. However, in extraordinary circumstances, an attorney could seek relief from the fixed fee, and additional compensation, though only upon an application with supporting affidavits, notice, and actual hearing.