

UNITED STATES DISTRICT & BANKRUPTCY COURTS
DISTRICT OF IDAHO

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November 18, 2016

NOTICE FOR PUBLIC COMMENT

The United States Bankruptcy Court's Local Rules Committee invites the public to review and provide comment on the proposed changes to the Bankruptcy Court's Local Rules 2016.1, 3018.1 and new 4004.1. Copies of the revised rules are attached to this notice.

You can obtain a copy of the local rules by going to the following URL: http://idd.uscourts.gov/bankruptcy/forms_fees_rules/Rules.cfm. There will also be a paper copy provided for reference at the United States Courthouses in Boise, Coeur d'Alene, and Pocatello. If you are unable to access the website, or not able to travel to a courthouse location, please call Kirsten Wilkinson, Chief Deputy of Operations at (208)334-9464.

All public comments are due by Friday, December 9th at 5:00 p.m. (MST). Please send your comments by email to local_rulesBK@id.uscourts.gov, or by mail at the following address:

United States District Court, District of Idaho
Attn: Kirsten Wilkinson, Chief Deputy of Operations
550 West Fort Street #400
Boise, ID 83724

If you have any question, you can send your question to local_rulesBK@id.uscourts.gov, or please call (208)334-9464. Thank you.

(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.

LOCAL BANKRUPTCY RULE 3018.1
CHAPTER 11 BALLOTS - VOTING ON PLANS

All ballots provided for voting on a proposed Chapter 11 plan shall indicate the return address of the plan proponent and all ballots cast regarding a proposed Chapter 11 plan shall be returned to the plan proponent. Not less than five (5) days prior to the confirmation hearing, the plan proponent shall file the ballots and a written summary of the ballots cast, and shall serve a copy of the summary on the debtor, the United States Trustee, any committee appointed pursuant to the Bankruptcy Code or their authorized agents, and any party that has filed an objection to confirmation or has requested notice. The summary shall contain a separate listing of acceptances and rejections and shall include the following information by class:

- (a) the name of each creditor filing an acceptance or rejection, the dollar amount of each claim, and whether the debtor has objected to the claim;
- (b) the total dollar amount and number of all allowed claims voted;
- (c) the percentage dollar amount of acceptances; and
- (d) the percentage number of acceptances.

Related Authority:

11 U.S.C. §§ 1126, 1128, 1129
Fed. R. Bankr. P. 3017
LBR 2002.3, 3020.1

Advisory Committee Notes:

Official Form [B314](#) provides the ballot for accepting or rejecting a chapter 11 plan of reorganization. Official Form [B313](#) provides the order for approving disclosure statement and fixing time for filing acceptances or rejections of the plan.

2010 Notes: In order to improve practice under this Rule, a form of Ballot Summary has been developed by the Committee. In addition to providing the information called for in this form, note that the Rule also requires the filing of a separate list of all accepting and rejecting ballots. The Ballot Summary form can be located at www.id.uscourts.gov.

2016 Notes: Plan proponents should note on the ballot summary whether the plan proponent believes there are any ballots that should not be allowed for purposes of confirmation, and indicate the reason(s) for disallowing those ballots.

LOCAL BANKRUPTCY RULE 4004.1 (NEW RULE)

**REQUESTING ENTRY OF A DISCHARGE FOR AN
INDIVIDUAL CHAPTER 11 DEBTOR**

(a) A request for entry of a discharge for an individual chapter 11 debtor shall be made by motion. At least 28 days prior to the hearing on the motion the notice of hearing and the deadline to object, and the motion shall be served on creditors, parties in interests, and the United States Trustee. Objections shall be filed not later than 7 days prior to the hearing.

RELATED AUTHORITY

11 U.S.C. § 522(q)(1), § 1141(d)(5)
Fed. R. Bankr. P. 1007(b)(7)(B), (b)(8), 4004(c)(3), (c)(4)

Advisory Committee Notes:

11 U.S.C. § 1141(d)(5) provides that where the debtor is an individual, the court may grant a discharge pursuant to a confirmed chapter 11 plan after notice and a hearing. This rule is intended to ensure that parties who may be affected by entry of the discharge receive notice and an opportunity to be heard with adequate time to respond prior to entry of the discharge. The motion needs to include adequate information to allow creditors, parties in interest, the United States Trustee and the court to ascertain whether the debtor has satisfied the requirements for entry of a discharge.