Bankruptcy Local Rule 2016-2

DEBTOR REPRESENTATION AND COMPENSATION IN CHAPTER 13

(a) **Presumptive fee.**

The court has established by General Order a presumptive fee for representation of debtors in a chapter 13 case for all services rendered, or to be rendered, throughout the duration of the case, and inclusive of all costs and expenses except filing fees. This fee shall be presumptively reasonable and allowed under 11 U.S.C. § 330(a)(4)(B) without itemization of time or other submission. Such fee is presumptive only and may be reviewed based on the facts and circumstances of the case and may be reduced or modified by the court after hearing. This presumptive fee does not remove the duty of attorneys to keep contemporary records of their time and expenses.

(1) **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 and filed pursuant to LBR 2016-1. Such attorney shall also obtain the signatures of the debtor(s) to the Model Retention Agreement.

(2) **Applications for fees in addition to presumptive amount.**

In extraordinary circumstances, an attorney may seek additional fees and costs through an application for additional compensation and, if necessary, a motion to modify a confirmed plan. Such an application shall include a justification for the request and itemization of all services and costs 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, and give notice to the debtor(s), the chapter 13 trustee, the U.S. Trustee, and all creditors and parties in interest.

(b) **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 after dismissal from funds paid by debtor(s) to and still held by the chapter 13 trustee, 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 may 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. 437

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 debtor(s) counsel, to encourage full performance of duties by such counsel throughout the duration of the case as

needs and changed circumstances require; and to eliminate the expense of serial requests for incremental fees. It has elected to do so through a significantly higher presumptively reasonable fee, but conditions its availability to those cases where debtor(s) and 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 the presumptive 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 pursuant to LBR 2016-1. As of January 2024, General Order 437 establishes a $5,500 presumptive fee.

The contemplation is that this compensation is a presumptive 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 beyond the presumptive fee only upon an application with supporting itemization and notice.