

Local Rule 2016-1 (Proposed)
Attorneys' Fees in Chapter 13 Cases

- (a) Compensation, Retainer and Timing of Payment. This rule governs the amount and manner of compensation due debtor(s)' counsel in Chapter 13 cases. 11 U.S.C. § 330(a)(4)(B). Subject to debtor(s)' agreement, debtor(s)' counsel may be compensated for services rendered and reimbursed for actual, necessary expenses either: (1) after obtaining court approval by noticed motion, as specified in subdivision (b) hereof; or (2) without court approval by accepting the flat fee, as specified in subdivision (c) hereof.
- (b) Court Approval. Counsel electing compensation under this subdivision shall seek court approval of compensation for services rendered and/or costs incurred by application. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016. Notice shall be consistent with Rule 2002(a), as limited by Rule 2002(h). Fed. R. Bankr. P. 2002(a), (h); LBR 2002-3.

1) Fees and Costs.

Absent a showing that it will not adequately compensate debtor(s)' counsel, compensation for services rendered and the amount of actual, necessary costs shall be determined by the lodestar method.

2) Retainer.

Except for fees and costs earned and withdrawn from the attorney's trust account before the date of the petition, any retainer received from the debtor(s) and/or a third party shall be maintained in the attorneys' trust account. Cal. Rule of Professional Conduct 1.15(a). Subject to applicable nonbankruptcy law, there is no limit on the amount of retainer debtor(s)' counsel may seek, or accept, from a Chapter 13 client in anticipation of a Chapter 13 case.

3) Payment.

Subject to applicable nonbankruptcy law, e.g., Cal. Rule Professional Conduct 1.15(a), any retainer received from the debtor(s) and/or a third party may not be withdrawn from debtor(s)' counsel trust account until entry of an order authorizing payment after application. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016. Subject to 11 U.S.C. §§ 507, 524, 1322(a)(2), 1328, after entry of an order approving compensation and reimbursement of expenses, 11 U.S.C. §§ 330, 331, there is no restriction on when counsel for the debtor(s) may be paid for services performed and/or reimbursed for expenses incurred, e.g., front-loaded, back-loaded, equal rate of payment, and the Chapter 13 trustee shall pay debtor(s)' counsel fees and costs consistent with the terms of the most recently confirmed plan.

(c) Without Court Approval. Counsel electing compensation under this subdivision may be compensated by a flat fee for services rendered and reimbursed for costs incurred without seeking court approval. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016. Any attorney or firm electing compensation under this subdivision shall file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*. Except for adversary proceedings, the flat fee includes all prepetition and postpetition services rendered and costs incurred. Costs incurred includes without limitation filing fees, credit counseling, post-petition financial management course, photocopying and postage.

1) Fees.

(A) Nonbusiness Cases and Business Cases.

The flat fees for a nonbusiness case shall be \$8,500 and the flat fee for a business case shall be \$12,500. Nothing in this subdivision shall preclude: (i) counsel for the debtor from agreeing to accept a flat fee in a lesser amount, provided that the flat fee otherwise complies with subdivision (c) of this rule; or (ii) the court from ordering fee disgorgement, 11 U.S.C. § 329(b), either sua sponte or on the motion of the United States Trustee or a party in interest.

(B) Definition.

For the purposes of this subdivision, there is a rebuttable presumption that any Chapter 13 case is a nonbusiness case. That presumption may be rebutted by a preponderance of the evidence where the original petition, schedules, and statements demonstrate that: (1) the debtor(s) or a contributing non-filing member of the debtor(s)' household has an ownership interest in a business, e.g., sole proprietorship, partnership, or an entity, i.e., an S corporation or LLC, in which profits and losses are passed through to the equity holders for tax purposes, or in one or more rental properties; and (2) either (A) without consideration of the amount due any purchase money residential mortgage lender, a significant portion of the scheduled debt arose out of business or rental operations; or (B) a significant portion of the debtor(s)' and/or contributing non-filing member of the debtor(s)' household's aggregate gross going forward income is attributable to the business or rental operations.

(C) Board Certification Enhancement.

Attorneys who are board certified in bankruptcy law by the State Bar of California Board of Legal Specialization or by

the American Board of Certification on the date of the petition may increase the fee to which they would be entitled under subdivision (c) (1), or any later increased fee thereunder, by 20%. Not later than 28 days after filing the petition, any attorney contending entitlement to the fee enhancement under this provision shall file EDC Form 3-750.

2) Costs.

Prior to and during the case, the court presumes that debtor(s)' counsel will incur not less than \$500 for actual, necessary expenses, i.e., filing fees, credit counseling, personal financial management course, postage and photocopying.

3) Retainer.

Attorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c) (1), as increased by subdivision (c) (7); and (B) the amount of costs in subdivision (c) (2), as increased by subdivision (c) (7). Absent compliance with Californian Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account.

4) Payment.

Debtor(s)' counsel shall be paid the flat fee prescribed by subdivision (c) (1), or such lesser amount as debtor(s)' counsel may agree to accept, and reimbursed for costs, subdivision (c) (2), in the following manner:

(A) Withdrawal of Funds from Trust Account.

If any retainer from the debtor(s) and/or a third party has been deposited in the attorney's trust account, rather than the attorney's operating account, as authorized by California Rule of Professional Conduct 1.15(b), the retainer shall be withdrawn when the petition is filed, without regard to whether all schedules and statements or the Chapter 13 plan have been filed. Fed. R. Bankr. P. 1007, 3015(b).

(B) Payment by the Chapter 13 Trustee.

After confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c) (1) less any retainer received. Debtor(s)' counsel is enjoined from front-load payment of fees and/or costs.

5) Dismissal or Conversion.

If the case is dismissed or converted to Chapter 7, debtor(s)' counsel shall not be entitled to any further compensation, whether from the Chapter 13 trustee, the debtors or otherwise, for services rendered and/or for costs incurred for the preparation or prosecution of the Chapter 13 case.

6) To Whom the Chapter 13 Trustee Shall Make Payment.

Any payment of fees due the debtor(s)' counsel under the plan, EDC Form 3-080 § 3.06, made by the Chapter 13 trustee shall be made to the debtor(s)' then current counsel of record, without regard to whether that attorney filed the case or confirmed the plan under which payments are made.

7) Annual Adjustment.

Starting on December 15, 2024, and continuing not later than December 15, each year thereafter, the flat fee described in subdivision (c) (1) (A) and costs described in subdivision (c) (2) shall be increased by the amount of the consumer price index as determined by the Bureau of Labor Statistics. The Clerk of the Court shall calculate the increase for the flat fee and costs based on the proceeding 12-month period, rounded to the nearest \$10, and the then Chief Bankruptcy Judge will issue a general order increasing the flat fee by that amount. The Clerk of the Court will publish the increased flat fees and costs on the court website. The increased fees and costs are applicable to all Chapter 13 cases filed on or after January 1, of the following year.

- (d) Election. Debtor's counsel shall elect compensation under subdivision (b) or subdivision (c) in the first Chapter 13 plan filed, i.e., Chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first Chapter 13 filed shall be deemed an election to seek compensation and expenses under subdivision (b). Except as provided in Rule 60, that election, or failure to elect, is irrevocable. Fed. R. Civ. P. 60, *incorporated by Fed. R. Bankr. P. 9024.*