

LOCAL RULE 2016-1
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Except for fees and costs earned and withdrawn from the attorney's trust account before the date of the petition, any retainer received from the debtor(s) and/or a third party shall be maintained in the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 Rule Professional Conduct 1.15(a), any retainer received from the debtor(s) and/or a third party may not be withdrawn from debtor(s)' counsel trust account until entry of an order authorizing payment after application. 11 U.S.C. § 330; Fed.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~~ \$12,000 and the flat fee for a business case shall be ~~\$12,500~~ \$18,000; provided:

(i) Acceptance of a Lesser Amount.

Nothing in this subdivision shall preclude counsel for the debtor(s) from agreeing to accept a flat fee in a lesser amount, provided that the flat fee otherwise complies with subdivision (c) of this rule. Notwithstanding an agreement to accept a lesser amount, the debtor(s) and counsel may agree in writing, e.g., in the fee agreement or by post-petition stipulation, that circumstances warrant an increase in the flat fee up to the amount specified in subdivision (c)(1), as increased by subdivision (c)(7). In such event, debtor(s)' counsel shall submit an ex parte application, with notice to U.S. Trustee and to the Chapter 13 trustee, and an order increasing the fee to that amount.

(ii) Attorneys' Fees Recovered from Creditors or Other Persons.

In addition to the fees specified in subdivision (c)(1)(A), debtor(s)' counsel may be paid and retain any additional fees and costs recovered by the debtor from a creditor, other party in interest, or other third-party awarded the debtor and paid as a part of a judgment or settlement for counsel's representation of the debtor(s) for services that are included in the subdivision (c)(1)(A) flat fee amounts.

(iii) Disgorgement.

Nothing in this subdivision shall preclude 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~~ at least 51% of the scheduled debt arose out of business or rental operations; or (B) ~~a significant portion~~ at least 51% 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.

- A) Amount. 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.
- B) Waiver. Debtors who have paid an attorney a retainer, whether for costs or for fees, shall be ineligible for payment of any filing fee in installments. Fed. R. Bankr. P. 1006(b).

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 California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account.~~

- A) Amount. Attorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the lesser of 50% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7) or of such lesser amount as the attorney has agreed to accept.
- B) Deposit into Trust. Except as provided herein, any retainer received shall be deposited in the attorney's trust account. Nothing in this subdivision shall preclude an attorney, who has complied with California Rule of Professional Conduct 1.15(b), from depositing into the attorney's general office account any retainer received, provided the amount is not greater than 25% of the lesser of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7) or of such lesser amount as the attorney has agreed to accept.

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.*~~

Subject to subdivisions (c)(1)(A)(iii) (disgorgement) and (c)(5) (dismissal or conversion), debtor(s)' counsel shall be entitled to a portion of the flat fee described in subdivision (c)(1) based on the progress of the case; said fees shall be payable on the dates and in the amounts as follows:

- A) *On Filing the Petition.* When the petition is filed and without regard to whether all of the schedules and statements, as well as Chapter 13 plan, are filed, debtor(s)' counsel shall be entitled to 25% of the flat fee described in subdivision (c)(1). Said amount shall be paid first from any retainer received. If debtor(s)' counsel has not already taken the retainer, as authorized in subdivision (c)(3), the attorney shall withdraw from trust the lesser of: (i) 25% of the fee described in subdivision (c)(1) and the costs described in subdivision (c)(2); or (ii) the retainer received. If the debtor(s)'s counsel has not taken a retainer or if the retainer is insufficient to pay the debtor's counsel the amount due hereunder, the Chapter 13 trustee shall pay the amount of the insufficiency on monthly basis and shall do so as expeditiously as funds are available and as is consistent with the terms of the confirmed plan.
- B) *On Chapter 13 Plan Confirmation.* When the debtor has achieved confirmation of a plan, whether the first plan filed or a modified Chapter 13 plan, debtor(s)' counsel shall be entitled to an aggregate of 50%, viz., an additional 25%, of the flat fee described in subdivision (c)(1). Said amount shall be paid first from any retainer received. If debtor(s)' counsel received a retainer in excess of 25% of the flat fee described in subdivision (c)(1), the attorney shall withdraw from trust the remainder of the retainer. If the debtor(s)'s counsel has not taken a retainer or if the retainer is insufficient to pay the debtor's counsel the amount due hereunder, after the trustee has paid the amount due under subdivision (c)(4)(A), the Chapter 13 trustee shall pay the amount of the insufficiency on monthly basis and shall do so as expeditiously as funds are available and as is consistent with the terms of the confirmed plan.
- C) *After Confirmation and Before Completion of the Chapter 13 Plan.* After the debtor has achieved confirmation of a plan, whether the first plan filed or a modified Chapter 13 plan, debtor(s)' counsel shall be entitled to an aggregate of 100%, viz., an additional 50%, of the flat fee described in subdivision (c)(1). Said amount shall be paid after the trustee has paid the amounts due under subdivision (c)(4)(A)-(B), the Chapter 13 trustee shall pay that amount on monthly basis in equal monthly installments over the term of the most recently confirmed plan. Debtor(s)' counsel is enjoined from front-loading fees and/or costs.
- D) *Back-loading Fees and/or Costs.* Nothing in subdivision (c)(4)(A)-(C) shall preclude debtor(s)' counsel from voluntarily back-loading fees and 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.~~

- A) No Further Compensation. 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. Subject to (c)(1)(A)(iii), counsel shall be entitled to retain any retainer received, not exceeding 25% of the flat fee described in subdivision (c)(1) plus costs, and any payments received from the Chapter 13 trustee.
- B) Refund of Retainer In Excess of 25% of Subdivision (c)(1)(A) and Filing EDC Form 2016-1. If the case is dismissed or converted to Chapter 7 without confirmation of a plan and if debtor's counsel has accepted a retainer under subdivision (c)(3) that exceeds 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7), or such lesser amount as the attorney has agreed to accept, subdivision (c)(1)(A)(i), not later than 14 days after dismissal or conversion, debtor's counsel shall: (i) refund to the person from whom the retainer was received any retainer in excess of 25%; and (ii) shall file EDC Form 2016-1 demonstrating compliance herewith.

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~~ 2025, 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 preceding 12-month period, rounded to the nearest \$100 for fees and the nearest \$10 for costs, 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) Cases Converted from Chapter 7 to Chapter 13. For any case converted from Chapter 7 to Chapter 13, debtor(s)' counsel may retain and/or must disgorge those fees as set forth herein.
- 1) If counsel elects compensation under subdivision (b) of this rule, absent an order otherwise, counsel for the debtor may retain all fees and/or costs received but not still held in trust and may seek additional fees under subdivision (b)(3) hereof.
 - 2) If counsel elects compensation under subdivision (c) of this rule, debtor(s)' counsel: (i) may retain any funds received that are less than, or equal to, the retainer cap in subdivision (c)(3), as increased in subdivision (c)(7); and (ii) must disgorge to the Chapter 13 trustee any funds

received that exceed the cap in subdivision (c)(3), as increased in subdivision (c)(7), immediately upon conversion to Chapter 13.

- e) 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 plan 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.