

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:

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CHAPTER 13
FIXED FEE AGREEMENT

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SECTION A

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REASONS FOR GENERAL ORDER NO. 2011-1

At the request of Kirkpatrick & Associates, L.L.C., Ms. Mary M. Taylor, Harrington & Myers, Mr. Phillip D. Rubins, Ms. Robin R. DeLeo, Mr. D. Bruce Cameron, Ms. Ruhama Dankner, Mr. Eugene B. Gerdes, III, Mr. R.L. Landreanu, Jr., and Mr. Leo M. Prange, III, a hearing was conducted on the General Order No. 2007-2 of the United States Bankruptcy Court for the Eastern District of Louisiana (“the District”) setting the fixed fee arrangement (“no look fee”).¹ Specifically, the aforementioned counsel requested review of the fee and an adjustment based on time expended in the administration of chapter 13 cases through confirmation.

In response, Section A conducted a hearing on May 27, 2011, noticed to all members of the bar registered to practice in the District. Counsel were invited to submit any evidence, but particularly, the Court requested time sheets reflecting time and costs expended in the administration of cases since General Order 2007-2 was entered. Time records were accepted into evidence from Ms. Ruhama Dankner, Mr. Timothy P. Kirkpatrick, Mr. Phillip D. Rubins, Mr. R. L. Landreaneau, Jr., Ms. Robin R. DeLeo, Ms. Mary M. Taylor, and Mr. Kirk L. Myers.

A review of the time records confirms that, on average, ten (10) hours of attorney time is required to represent a debtor from the initial consultation to implementation of the confirmed plan.

¹ Under the no look fee, counsel may, without further authorization, charge debtors a fee in an amount pre-determined by the Court to be reasonable in exchange for services specified by the Court.

The time requirement is in keeping with the Court's prior finding on May 3, 2007, and requires no adjustment to the fee based on time requirements. However, counsels' time records do support an increase in the standard fee for filing motions, objections, and plan modifications not included in the no look fee.

Counsel and the Chapter 13 Trustee ("Trustee") also requested that the Court consider an increase in the fee due to inflationary pressures, as well as, quality of performance. No independent support was offered in support of rising costs in the District. Cost of living statistics were not cited, and the Court notes that since 2007, inflation has been extremely low, and in some years, nonexistent. As a result, an upward adjustment in the no look fee cannot be supported based on inflationary pressures.

However, the Court is cognizant of the significant increase in the quality of work performed in the District due in large part to the experience of the bar. This has translated into a higher confirmation rate and lower dismissal rate among chapter 13 filings instituted after 2007.

For example, from 2005-2007 the confirmation rate for chapter 13 filings was approximately fifty percent (50%). That rate has increased to eighty-six percent (86%). More importantly, the percentage of cases pending one (1) to two (2) years after confirmation has risen to eighty-five percent (85%) of those confirmed.² The dismissal rate for chapter 13 cases has fallen to thirty percent (30%), which is down from sixty percent (60%) just four (4) years ago.

While most of the bar meets or exceeds these statistics based on the collective performance of individual cases, some notable exceptions exist. There are a small number of firms or individual

² If discharged and converted cases are included, the rate rises to ninety-five percent (95%).

attorneys that consistently underperform both in achieving confirmation and in maintaining cases beyond confirmation. Some of the factors influencing below average performance include lower experience levels, lack of diligence or attention to detail, lack of responsiveness to client requests, poor screening for feasibility, lack of client cooperation, and unforeseen post-filing events that make a case no longer feasible. While an attorney cannot be blamed for his client's failures or post-filing events beyond his control, it can be assumed that on average, each attorney in the District will experience his or her fair share of uncooperative clients and negative post-filing events. Thus, an individual attorney or firm's overall performance rate should be consistent with that of the District.³

These conclusions are supported by Trustee. Trustee has represented that the majority of his office's administrative services are spent handling files of inexperienced or uncooperative counsel and debtors. In an effort to assist the bar and their clients, Trustee has conducted educational seminars for the bar; posted lists of documents required prior to or shortly after filing; and published his procedures for section 341(a) meetings, continuances, confirmation hearings, and dismissals. While most of the bar proficiently represents clients through confirmation, notable exceptions exist and command considerable and disproportionate effort on his part. Despite Trustee's efforts at training, these counsel routinely fail to comply with the basic requirements of filing and frequently submit plans that do not meet the fundamental standards necessary for confirmation.

In an effort to obtain information in a timely fashion, avoid needless waste of judicial resources, and reduce the administrative costs of Trustee, the Court will implement the following

³ An exception to this rule might involve the *pro bono* project client base which is by definition lower in income and more challenging than the average client base of the bar. Instead, it is gratifying that the success rate of *pro bono* project counsel is equal to or exceeds the overall success rate in the District. This supports the Court's conclusion that the efforts of counsel can have a significant and lasting impact on the success of a case.

procedures regarding the no look fee:

1. The distinctions between no look fees allowed for above and below the means debtors are eliminated, and all counsel will be allowed a standard no look fee in the amount of \$2,500.00.

2. Because continued communication between counsel and client following the expiration of the no look period has resulted in a significant retention of cases, and in order to compensate counsel for these efforts in a cost effective way, counsel requesting compensation under the no look fee will also receive \$300.00 in additional compensation payable in months 24, 36, 48, and 60 of confirmed plans. The Trustee shall withhold from distribution, \$25.00 per month beginning in month 13 of the plan and for each month thereafter for this purpose. Debtor's counsel will receive an annual \$300.00 payment if the case is in good standing and still pending under chapter 13 at the end of the applicable plan year. No partial payments will be made, and any residual funds not distributed will be payable to other claimants in the priorities provided by the plan.

3. The standard fee for filing a successful motion not contemplated by the no look fee will be \$350.00, plus costs. However, successful objections to a motion to dismiss or for relief from the automatic stay when followed by a request for plan modification shall be compensable at the standard rate of \$650.00 for the combined representation of objection and subsequent plan modification.

4. The no look fee shall require debtor's counsel to review all proofs of claim filed; file proofs of claim for secured or priority claimants provided for under the plan, if the claimant does not timely file a proof of claim; and modify the plan after confirmation or objection should a timely proof of claim require greater distributions than provided for by the confirmed plan.

5. No fees will be awarded to counsel if a plan is not confirmed, except on separate application with the Court. A fee request may be made after the denial of confirmation but must be filed prior to dismissal of the case. The granting of a fee will be at the discretion of the judge who may consider the reasons for the case's failure.

6. A case may be dismissed on *ex parte* motion by the Trustee if the schedules, mailing matrix, statement of financial affairs, proposed plan, and sixty (60) days of pay advices are not filed into the record within the later of fourteen (14) days after the filing of the petition or the expiration of any Court authorized extension.

7. An automatic reduction of the lesser of \$350.00 or \$100.00 per item not supplied will be applied to the no look fee if documentation requested by the Trustee or agreed corrections to the schedules or plan between Trustee and debtor's counsel are not made at least nine (9) days prior to any scheduled confirmation hearing or continued section 341(a) meeting. The reduction may be imposed multiple times if after a continuance of either the section 341(a) meeting or confirmation hearing, the information is still not provided in a timely manner. Any request for reduction will be filed by Trustee as an objection to confirmation at least seven (7) days prior to the confirmation hearing and if granted, shall be applied from the first funds received. At a minimum, copies of the credit counseling certificate, tax return for the year preceding filing, certificate of filing of tax return for the preceding four (4) years; liquidation analysis, and counsel's fee arrangement must be supplied at least nine days prior to the section 341 meeting of creditors. In addition, if debtor owes a domestic support obligation, nine (9) days prior to the section 341 meeting of creditors, debtor's counsel must provide a copy of the judgment of support as well as the full name, address, and telephone number for both the party owed and the state support agency.

8. Counsel must sign and file the Bankruptcy Rule 2016(B) Disclosure of Fixed Fee Agreement attached to this Opinion as Exhibit A.

Other Fee Arrangements

The fixed fee limits approved by the Court in this Order are not exclusive. Counsel have the option to forego the pre-approved fixed fee arrangement described in this Order in favor of a traditional application based on a lodestar analysis, statute and any other factors counsel believe relevant. The purpose of this Order is to establish a standard that is optional, simple, and efficient, but that meets both practical and statutory considerations. If counsel elect to file individual applications for compensation under traditional statutory guidelines, daily time sheets should be maintained, and time should be delineated by tasks in 1/10th of an hour increments by the party performing the task. Applications for compensation in excess of the fixed fee may not be filed or set for hearing until 120 days following the confirmation of the plan. Trustee is not authorized to disburse administrative expenses to counsel in excess of the fixed fee limits without a court order approving same.

New Orleans, Louisiana, August 31, 2011.

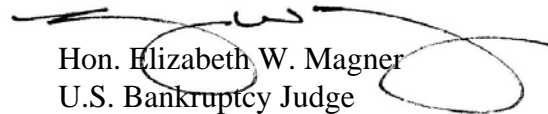

Hon. Elizabeth W. Magner
U.S. Bankruptcy Judge

EXHIBIT A

Bankruptcy Rule 2016(b) Disclosure of Fixed Fee Agreement

1. I, [Name of Attorney], have agreed to provide the following services to the Debtor(s) on a fixed fee basis for a period ending not less than 120 days after confirmation of Debtor(s)' Chapter 13 plan:

- A. Counsel with the debtor(s) on an as needed basis;
- B. Prepare and timely file a proposed Chapter 13 plan and any required amendments to the plan;
- C. Prepare and timely file the required petition, schedules, statement of financial affairs, and all other required documents;
- D. Prepare and file miscellaneous motions required to protect the debtor(s)' interests in the case;
- E. Prepare and file responses to motions filed against debtor(s)-even if the response is a statement that the debtor(s) have no opposition to the relief requested (Section A only)- and attend the scheduled hearing;
- F. Attend the section 341(a) meeting of creditors;
- G. Review all proofs of claim filed; file proofs of claim for secured or priority claimants provided for under the plan, if the claimant does not timely file a proof of claim; and modify the plan after confirmation or object should a timely proof of claim require greater distributions than provided for by the confirmed plan;
- H. Prepare and file objections to claims necessary to confirm, implement or enforce the terms of a plan which could have been brought within 120 days of confirmation.
- I. Attend the confirmation hearing, if required under the circumstances, including but not limited to if an Objection is filed; and
- J. Advise the debtor(s) concerning their obligations and duties pursuant to the Bankruptcy Code, Bankruptcy Rules, applicable court orders and the provisions of their chapter 13 plan.

2. The fixed fee agreement does not include the following services:

A. Representation of the debtor(s) in an adversary proceeding, either as a plaintiff or a defendant;

B. Representation of the debtor(s) in a contested matter, the subject of which is extraordinary in the context of chapter 13 cases in the United States Bankruptcy Court for the Eastern District of Louisiana;

C. Representation of the debtor(s) in any matter in which the Court orders fee shifting pursuant to which fees are to be paid by a person other than the debtor(s); and

D. Representation on matters for which the first hearing is set more than 120 days following confirmation.

3. I have not shared or agreed to share any of the compensation paid or to be paid. The following sets forth all compensation that is being paid by any person or entity other than the Debtor(s).

4. As of the filing of the petition, I have received \$ _____ compensation and \$_____ will be paid under the chapter 13 plan.

Dated _____

Counsel to Debtor(s)