

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

IN RE:) ADMINISTRATIVE ORDER NO. 07-2
)
ADMINISTRATION OF) JUDGE RANDOLPH BAXTER
CHAPTER 13 CASES IN) JUDGE PAT E. MORGENSTERN-CLARREN
THE CLEVELAND COURT) JUDGE ARTHUR I. HARRIS

**ORDER GOVERNING PROCEDURE FOR ALLOWANCE
OF ATTORNEY'S FEES IN CHAPTER 13 CASES
FILED ON OR AFTER JUNE 1, 2007**

In order to secure the just, speedy, and inexpensive determination of Chapter 13 cases and proceedings, the undersigned judges issue this Administrative Order concerning the allowance of attorney's fees in Chapter 13 cases. The fee schedules contained in this Administrative Order are based upon a consensus of experienced local Chapter 13 practitioners, the Chapter 13 Trustee, and the U.S. Trustee. The fee schedules are also consistent with the undersigned judges' experience reviewing Chapter 13 fee applications and determining the reasonable hours and reasonable hourly rates for the normal and customary services rendered in Chapter 13 cases under the traditional lodestar analysis, particularly in cases filed on or after the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

(BAPCPA). While the use of these fee schedules is intended to encourage uniformity and minimize the time and expense of the fee application process, attorneys remain free to seek compensation of any reasonable amount of compensation by submitting detailed billing information under the traditional lodestar format, pursuant to Bankruptcy Rule 2016, 11 U.S.C. § 330, and the Guidelines for Compensation and Expenses of Professionals, prescribed under Local Bankruptcy Rule 2016-1 (“Guidelines”), which, as of the filing date of this administrative order, are set forth in General Order No. 93-1.

Unless otherwise ordered by the Court, this Administrative Order governs the compensation of attorneys in cases filed in the Cleveland Bankruptcy Court on and after June 1, 2007. This Order supersedes Administrative Order No. 03-6 to that extent.

IT IS ORDERED THAT:

1. An attorney representing a debtor under Chapter 13 shall be the attorney of record from the filing of the petition until the close or dismissal of the case (including disposition of motions to reinstate), unless relieved of representation by application and Court approval, or by another attorney filing a notice of substitution of counsel.
2. Within five (5) days of the filing of the petition, counsel for the debtor shall file with the Court an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” (which is attached to this Order as Exhibit A). If an

executed copy of the form “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” has not been timely filed with the Court, counsel fees shall be allowed –

- (a) only pursuant to a written agreement between the debtor and the debtor’s attorney that clearly delineates the nature and scope of the representation and the basis or rate of the fees and expenses. *See* Rules 1.2 and 1.5 of the Ohio Rules of Professional Conduct, made applicable by N.D. Ohio Local Civil Rule 83.5; and
- (b) only upon formal application under Bankruptcy Rule 2016(a) and in accordance with the Guidelines.

3. If –

- (a) an executed copy of the form “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” has been filed with the Court;
- (b) the total fee (including expenses other than filing fees) requested by counsel for the debtor is \$3,000 or less;
- (c) the fee arrangement provides that \$800 or less will be paid before the filing of the bankruptcy petition with the balance to be paid through the Chapter 13 plan; and
- (d) no party in interest has objected to the proposed fee,

then those fees may be allowed by the Court in the order confirming the debtor’s plan of reorganization based upon the form “Rights and Responsibilities of Chapter 13 Debtors and their Attorneys” signed by the attorney and debtor, and the attorney need not file a fee application under 11 U.S.C. §330 and Bankruptcy Rule 2016(a).

4. Counsel for the debtor may request fees and expenses exceeding the amount set forth in paragraph 3, upon (a) formal application under Bankruptcy Rule 2016(a) and in accordance with the Guidelines, with notice and a hearing; or (b) upon application under paragraph 6 of this Order for designated matters. Allowance of fees and expenses greater than the amounts specified in paragraph 3 or paragraph 6 of this Order shall be by separate order of the Court. Debtor's counsel may not receive a post-petition retainer or payment from the debtor other than as specified in this Order without leave of court.

5. As guidelines, the Court contemplates that the following matters will be included in the fee allowed under paragraph 3:

- (a) Personally meeting with the debtor to review the debtor's financial situation and to counsel the debtor regarding filing under either Chapter 7 or Chapter 13.
- (b) Analyzing the debtor's financial situation, assisting the debtor in understanding the debtor's rights and obligations throughout the pendency of the case, and assessing potential issues in the particular bankruptcy, including but without limitation, exemptions, automatic stays, and dischargeability and avoidance matters.
- (c) All conferences with the debtor, including timely responses to debtor inquiries, whether by telephone or in writing.
- (d) Preparation of the bankruptcy petition (including emergency petitions), schedules, statement of financial affairs, Form B22C, Chapter 13 plan, and all documents required to be filed pursuant to 11 U.S.C. § 521.
- (e) Negotiation and communication with priority and secured creditors, including the Internal Revenue Service.

- (f) Representation of the debtor at the meeting of creditors under 11 U.S.C. §341 and any continued meeting.
- (g) Responding to inquiries made by the debtor and the Chapter 13 Trustee in furtherance of the administration and/or prosecution of the Chapter 13 Plan.
- (h) Preparation of documents and notices, including submissions based upon Trustee recommendations, the filing of suggestion of bankruptcy, routine objections to claims, amendments to schedules, voluntary dismissals, and all case related correspondence.
- (i) Responding to routine objections to plan confirmation, and, when necessary, preparing, filing, and serving an amended plan.
- (j) Representation of the debtor at any and all confirmation hearings, but not including an evidentiary hearing.
- (k) Representation of the debtor in connection with at least one 11 U.S.C. § 362(c)(3) or (c)(4) motion, and at least two other 11 U.S.C. §362 motions – one concerning the debtor’s residence and one concerning a vehicle, but not including an evidentiary hearing upon these matters.
- (l) Representation of the debtor on motions to avoid liens.
- (m) Representation of the debtor on one motion to reinstate stay.
- (n) Representation of the debtor on one motion to reinstate case.
- (o) Representation of the debtor on routine objections to claims.
- (p) Providing such other legal services as are necessary for the administration of the case, including but not limited to, continuing to assist the debtor by returning phone calls, answering questions, and reviewing and sending correspondence.

6. Notwithstanding any other provision of this Order, for certain matters not within the guidelines for the standard fee, to encourage uniformity and consistency,

and to minimize the time and expense of the fee application process, the Court may approve the following fees using the “Application for Post-Confirmation Fees” (a copy of which is attached as Exhibit B), provided that, before filing the “Application for Post-Confirmation Fees,” counsel – (1) has documented that services rendered in the case exceed, under the traditional lodestar analysis, the fee approved in the confirmation order (and has included such documentation with the application), and (2) has obtained (and has included with the application) the recent written consent of the debtor to pay a specific dollar figure in excess of the fee approved in the confirmation order:

- (a) For a post-confirmation plan modification, up to \$350.
- (b) For a motion for authority to buy, sell, or refinance real property, up to \$350.
- (c) For a motion to incur debt, such as the purchase or lease of a motor vehicle, up to \$350.
- (d) For defense of a motion to lift stay (after the motions to lift stay contemplated within the fee approved in the confirmation order), but not including an evidentiary hearing, up to \$350.
- (e) Motions for authority to settle insurance claims and/or to use or distribute insurance proceeds, up to \$350.
- (f) For an additional motion to reinstate the automatic stay (beyond those allowed under paragraph 5 which are included in the fee approved in the confirmation order), up to \$200.
- (g) For a motion seeking suspension of the plan or payment deferral, up to \$200.

An application under this paragraph may request that the Court authorize the debtor to pay these fees directly to counsel.

7. If counsel elects not to seek fees under this Order, or if counsel fails to file with the Court an executed copy of the form “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” then counsel shall file a formal application under Bankruptcy Rules 2002 and 2016 and in accordance with the Guidelines.

8. With respect to novel, complex, or non-routine matters, counsel may file a fee application in compliance with Bankruptcy Rules 2002 and 2016, setting forth, at a minimum: (a) documentation that services rendered in the case exceed, under the traditional lodestar analysis, the fee previously approved by the Court, and (b) as to each activity for which an additional fee is requested, the identity of the person performing such services, the billing rate for such person, the services performed, the dates of the services, the amount of time expended, and how such services are novel, complex, or non-routine.

9. The payment of counsel fees is an administrative expense and shall be paid by the Chapter 13 Trustee, in accordance with 11 U.S.C. §507(a)(1). Unless the Court orders otherwise, counsel fees shall be paid in twelve monthly installments to the extent that funds are available.

10. For cause, the Court may order the reduction of fees by \$200 for the failure to file an original signed Declaration Re: Electronic Filing within five working days after the petition is filed as required under General Order 02-2.

11. If the Chapter 13 case is either converted or dismissed without reinstatement before confirmation of a plan, absent contrary order, the Trustee shall pay to the attorney for the debtor, to the extent funds are available, an administrative claim equal to 25%, up to a maximum of \$300, of the unpaid balance of the total fee that the debtor agreed to pay. Absent contrary order, attorney's fees shall not be paid by the Trustee if the case was dismissed or involuntarily converted prior to confirmation for failure – to obtain credit counseling pursuant to 11 U.S.C. § 109(h), to provide pay advices or other evidence of payment pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), or to comply with a show cause order issued by the Court.

12. This Order does not limit the rights of debtors, the Chapter 13 Trustee, the U.S. Trustee, or any creditor to object to any fee request, even if the amount sought falls within the fee schedules listed, and even if the debtor had previously consented in writing to pay the requested fees. Nor does this order excuse counsel from counsel's continuing obligation to maintain contemporaneous time records should a party in interest or the Court on its own motion object to any fee request. Specifically, the Chapter 13 Trustee is encouraged to comment on fees for attorneys whose action or

inaction results in delay, unnecessary work, abuse of process, failure to provide complete, competent, or timely representation, or such other matters.

13. All counsel for Chapter 13 debtors shall inform their clients in writing if they do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate, pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct and Northern District of Ohio Local Civil Rule 83.5.

/s/ Randolph Baxter
Judge Randolph Baxter

/s/ Pat E. Morgenstern-Clarren
Judge Pat E. Morgenstern-Clarren

/s/ Arthur Harris
Judge Arthur I. Harris

EXHIBIT A TO ADMINISTRATIVE ORDER 07-2

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:) Chapter 13 Case No.
)
) Bankruptcy Judge
Debtor(s))

**RIGHTS AND RESPONSIBILITIES OF
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS**

Chapter 13 gives debtors important rights, such as the right to keep property that could otherwise be lost through repossession or foreclosure – but Chapter 13 also places responsibilities on debtors, such as the responsibility to make a complete and truthful disclosure of their financial situation. It is important for debtors who file a bankruptcy case under Chapter 13 to understand their rights and responsibilities. It is also important that the debtors know what their attorney’s responsibilities are, and understand the importance of communicating with their attorney to make the case successful. Debtors should also know that they may expect certain services to be performed by their attorney. It is also important for debtors to know the costs of attorney’s fees through the life of the plan. In order to ensure that debtors and their attorney understand their rights and responsibilities in the bankruptcy process, the debtors and their counsel hereby agree to the following guidelines provided by the United States Bankruptcy Court for the Northern District of Ohio at Cleveland:

A. Before the case is filed:

The **debtor** agrees to:

1. Provide the attorney with accurate, and, to the best of the debtor’s ability, complete financial information.
2. Discuss with the attorney the debtor’s objectives in filing the case.
3. Keep all scheduled meetings and/or appointments, both with the attorney and with other parties to the case.
4. Respond to all attorney requests as soon as possible.

5. Provide the attorney with a working telephone number or other form of communication.
6. Obtain credit counseling from an approved nonprofit budget credit counseling agency during the 180-day period preceding the date of the petition or provide the attorney with accurate information to prepare a certificate of exigent circumstances, as required by 11 U.S.C. § 109(h).
7. Inform the attorney about any pending lawsuits brought by or against the debtor and any claims the debtor may have against third parties.

The **attorney** agrees to:

1. Personally meet with the debtor to review the debtor's assets, liabilities, income, and expenses.
2. Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss both procedures with the debtor, and answer the debtor's questions.
3. Explain what payments will be made directly by the debtor to a creditor, such as mortgages, adequate protection, and vehicle lease payments, and what payments will be made through the Chapter 13 plan.
4. Explain to the debtor how, when, and where to make the required Chapter 13 plan payments and that the first month's plan payment must be made to the Trustee within thirty (30) days of the date the case is filed with the Court.
5. Explain to the debtor how the attorney's fees and Trustee's fees are paid, and provide an executed copy of this document to the debtor.
6. Advise and assist the debtor in complying with the credit counseling requirements of 11 U.S.C. § 109(h).
7. Advise the debtor of the requirement to attend the §341 Meeting of Creditors and to bring to the meeting a valid, unexpired picture identification and proof of social security number.

8. Advise the debtor of the necessity of maintaining liability, collision, and comprehensive insurance on vehicles owned or leased by the debtor.
9. Advise the debtor of the necessity of maintaining insurance on any real property that the debtor may own.
10. Timely prepare and file the debtor's petition, plan, statements, schedules, Form B22C, and all documents required by 11 U.S.C. § 521, as well as any required amendments thereto.
11. Advise the debtor as to his/her eligibility for a bankruptcy discharge.
12. Advise the debtor in writing if the attorney does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate, pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct and Northern District of Ohio Local Civil Rule 83.5.

B. After the case is filed:

The **debtor** agrees to:

1. Keep the Trustee and the attorney informed as to debtor's current address and telephone number.
2. Timely make all Chapter 13 payments to the Chapter 13 Trustee.
3. Timely make all post-petition payments to the mortgage company and any other creditors that the debtor has agreed to pay directly, and, if appropriate, maintain proper insurance coverage and timely pay post-petition tax obligations.
4. Cooperate with the attorney in preparing all pleadings and attending all hearings as required.
5. Prepare and file all delinquent federal, state, and local tax returns within 30 days, and thereafter file all required tax returns in a timely manner.

6. Promptly inform the attorney of any wage garnishments or attachments of assets which occur or continue to occur after the filing of the case.
7. Let the attorney know if the debtor is sued at any time during the case.
8. Contact the attorney regarding any changes in employment, increases or decreases in income, or any other financial problems or changes.
9. Cooperate with the attorney and the Trustee in timely producing any financial or supporting documents requested by the attorney or the Trustee.
10. Contact the attorney to find out what approvals are required before buying, refinancing, or selling real property, or before entering into any long-term loan or lease agreements.
11. Complete an instruction course concerning personal financial management, as required by 11 U.S.C. § 1328(g).

The **attorney** agrees to:

1. Continue to represent the debtor through the conclusion of the case, whether by dismissal or discharge, unless removed as counsel by order of the Court.
2. Instruct the debtor as to the date, time, and location of the §341 Meeting of Creditors, and appear at the §341 Meeting of Creditors with the debtor.
3. Respond to objections to plan confirmation, and, when necessary, prepare an amended plan.
4. Prepare, file, and serve necessary plan modifications which may include suspending, decreasing, or increasing plan payments.
5. Prepare, file, and serve necessary amended statements and schedules in accordance with information provided by the debtor.
6. Prepare, file, and serve necessary motions to incur debt, or to buy, sell, or refinance real property when appropriate.

7. Object to improper or invalid claims, if necessary, based upon documentation provided by the debtor.
8. Be available to respond to the debtor's questions throughout the life of the plan.
9. Represent the debtor in motions for relief from stay and motions to dismiss or convert.
10. Provide such other legal services as are necessary to the administration of the case before the Bankruptcy Court, which include, but are not limited to, when necessary, meeting with the debtor, presenting appropriate legal pleadings and making necessary court appearances.
11. File an executed copy of this document with the Court, and provide an executed copy of it to the debtor and the Chapter 13 Trustee.
12. Advise the debtor in writing if the attorney at any time fails to maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate, pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct and Northern District of Ohio Local Civil Rule 83.5.

C. Attorney's fees:

The initial fee charged the debtor, exclusive of court costs, is \$_____, of which \$ _____ was paid before the filing of the Chapter 13, and with the balance of \$ _____ being paid by the Chapter 13 Trustee after confirmation of the Chapter 13 plan. The attorney may not demand or receive any additional fees directly from the debtor, other than the initial retainer, unless the Court orders otherwise.

If the Chapter 13 case is either converted or dismissed before confirmation of a plan, absent contrary Court order, the Chapter 13 Trustee shall pay to the attorney for the debtor, to the extent funds are available, an administrative claim equal to 25%, up to a maximum of \$300, of the unpaid balance of the total fee that the debtor agreed to pay. Absent contrary order, attorney's fees shall not be paid by the Trustee if the case was dismissed or involuntarily converted prior to confirmation for failure – to obtain credit counseling pursuant to 11 U.S.C. § 109(h), to provide pay advices or other

evidence of payment pursuant to 11 U.S.C. § 521(a)(1)(B)(iv), or to comply with a show cause order issued by the Court.

If the initial fee charged to the debtor and ordered by the Court is not sufficient to compensate the attorney for legal services rendered in the case, and if the attorney has documented that services rendered in the case exceed, under the traditional lodestar analysis, the fee approved in the confirmation order, the attorney agrees to apply to the Court for approval of additional fees. The following legal services are not covered by the initial fee charged debtor, and the attorney may apply to the Court for payment in the amount specified,

**Additional Fee, If Any,
Debtor Agrees To Pay**

**Should Additional Service
Be Performed***

**Description Of Additional Legal Service
Not Covered By Initial Fee**

\$ _____	For a post-confirmation plan modification
\$ _____	For a motion for authority to buy, sell, or refinance real property
\$ _____	For a motion to incur debt, such as the purchase or lease of a motor vehicle
\$ _____	For defense of additional motions to lift stay, beyond one concerning the debtor's residence and one concerning a vehicle, which are included within the initial fee, but not including an evidentiary hearing
\$ _____	Motions for authority to settle insurance claims and/or to use or distribute insurance proceeds
\$ _____	For an additional motion to reinstate the automatic stay beyond those allowed under Administrative Order 07-2

* Counsel requesting approval of fees in excess of the amounts stated in paragraph 6 of Administrative Order 07-2 must file a detailed fee application with the Court.

\$ _____ For a motion seeking suspension of the plan or payment deferral

In addition to the above, the attorney may need to provide legal services to the debtor that are not covered by the initial fee charged. Such services include: handling novel, complex, or non-routine motions, oppositions to motions, or objections to claims; representation in connection with an evidentiary hearing, or representation in adversary proceedings. These types of proceedings may be billed at reasonable hourly rates, and the attorney shall file a fee application in compliance with Bankruptcy Rules 2002 and 2016, setting forth, at a minimum, documentation that services rendered in the case exceed, under the traditional lodestar analysis, the fee approved in the confirmation order, and, as to each activity for which a fee is requested, the identity of the person performing such services, the billing rate for such person, the services performed, the dates of the services, the amount of time expended, and how such services are novel, complex, or non-routine. The attorney's current hourly rate is \$_____.

All post-filing attorney's fees shall be paid through the plan unless otherwise ordered by the Court. If the debtor disputes the legal services provided or the fees charged by the attorney, the debtor may file an objection with the Court and set the matter for hearing. The attorney may move to withdraw for cause shown, or the debtor may discharge the attorney at any time.

The Court may, *sua sponte*, or upon motion of an interested party, disallow all or part of requested attorney's fees or may order the disgorgement of all or part of already collected fees if the Court finds that the attorney failed to provide services in accordance with the guidelines set forth in this document.

Dated: _____

Debtor

Dated: _____

Debtor

Dated: _____

Attorney for Debtor(s)

By submitting this form "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," Debtor's attorney certifies that this form is identical in all respects to the form effective June 1, 2007.

___ Motion to reinstate the automatic stay
Date filed _____Hearing Date(s) _____
Amount Requested \$ _____

___ Motion seeking suspension of the plan or payment deferral
Date filed _____Hearing Date(s) _____
Amount Requested \$ _____

2. The undersigned represents to the Court --

that the services indicated above have been completed;

that time records verifying the services have been kept;

that accompanying this application is documentation that services rendered in this case exceed, under the traditional lodestar analysis, the total fee previously approved in the confirmation order;

that also accompanying this application is the recent written consent of the debtor(s) to pay the specific amount of additional compensation being requested in excess of the fee approved in the confirmation order; and

that additional compensation beyond that previously approved by the Court is requested in the amount of \$_____.

Counsel further certifies that a copy of this application was served upon the debtor(s), the Chapter 13 Trustee, and the U.S. Trustee as set forth below.

3. The debtor, the Chapter 13 Trustee, or any interested party may file a response or object to this application, within twenty days from service, with the Clerk of Courts of the United States Bankruptcy Court. A copy of the response or objection shall be served upon the debtor, the Chapter 13 Trustee, and

debtor's counsel. If no response or objection is timely filed, the Court may enter an order allowing the fees.

Attorney for the Debtor(s), etc.

CERTIFICATE OF SERVICE

A copy of this document was sent electronically or by regular U.S. mail on _____ to the Chapter 13 Trustee, Craig Shopneck, 200 Public Square, Suite 3860, Cleveland, OH 44114, the U.S. Trustee, 201 Superior Ave., East, Suite 441, Cleveland, Ohio 44114, and to the debtor at [*insert address*].

Attorney for the Debtor(s), etc.