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NORTHERN DISTRICT OF OHIO
CANTON

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

| | | |
|---|---|---|
| IN RE: | ) | ADMINISTRATIVE ORDER NO. 05-06 |
| | ) | |
| ATTORNEY FEES AND ADMINISTRATION OF CHAPTER 13 CASES IN THE CANTON COURT | ) | JUDGE RUSS KENDIG |

**ORDER GOVERNING PROCEDURE FOR ALLOWANCE OF ATTORNEY FEES IN CHAPTER 13 CASES FILED ON AND AFTER OCTOBER 17, 2005**

Unless otherwise ordered by the Court, this Administrative Order governs the compensation of attorneys in cases filed in the Canton Bankruptcy Court on and after October 17, 2005. This Order supersedes Administrative Order 04-02, but attorneys may continue to propose fees based on either administrative order for cases filed until December 1, 2005.

**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 motion and Court approval, or by another attorney filing a notice of substitution of counsel.

2. At the time the petition is filed, counsel and the debtor shall file with the Court and serve on the Chapter 13 Trustee ("Trustee") an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys," which is attached as Exhibit A. If an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys" has not been filed with the Court, counsel fees shall be allowed only upon formal application under Bankruptcy Rule 2016(a).

3. If an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys" has been filed with the Court, and if the total fee (including expenses other than filing

fees) requested by counsel for the debtors is

(a) $1,500 or less; or

(b) $2,000 or less, and the fee arrangement provides that $500 or less will be paid before the filing of the bankruptcy petition with the balance to be paid through the Chapter 13 plan, and the Chapter 13 plan provides that the percentage to be paid to unsecured, non-priority creditors equals or exceeds 30% as a percentage and five thousand dollars ($5,000.00) or ten thousand dollars ($10,000.00) without regard to the percentage distribution,

then those fees may be allowed by the Court in the order confirming the debtor's plan of reorganization based upon the compensation statement signed by the attorney, without filing a fee application under 11 U.S.C. §330 and Bankruptcy Rule 2016(a). An additional fee of $250.00 may be added if the applicable commitment period is a mandatory five (5) years due to the income of the debtor(s) exceeding the applicable median family income pursuant to 11 U.S.C. § 1325(b)(4).

4. Counsel for debtor may request fees and expenses exceeding the amount set forth in paragraph 3, upon formal application under Bankruptcy Rule 2016(a) and in accordance with the Guidelines for Compensation and Expenses of Professionals prescribed under Local Bankruptcy Rule 2016 ("Guidelines"), with notice and a hearing. Allowance of fees and expenses greater than amounts specified in paragraph 3 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. Requests for additional compensation will be considered in extraordinary circumstances even if including services within the literal terms of this order.

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 counseling the debtor regarding filing under either Chapter 7 or Chapter 13, analyzing the financial situation and assisting the debtor in understanding the

debtor's rights and obligations throughout the pendency of the case.

(b) All conferences with the debtor, including timely responses to debtor inquiries, whether by telephone or in writing.

(c) Preparation of the bankruptcy petition, schedules, statement of financial affairs, including emergency petitions, and the Chapter 13 plan.

(d) Negotiation and communication with priority and secured creditors, including the Internal Revenue Service, and representation at hearings related thereto.

(e) Representation of the debtor at the meeting of creditors under 11 U.S.C. §341 and any continued meeting.

(f) Responding to inquiries made by the debtor and the Chapter 13 Trustee in furtherance of the confirmation and administration of the Chapter 13 Plan.

(g) 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.

(h) Responding to routine objections to plan confirmation, and, when necessary, preparing, filing and serving an amended plan or one (1) modification not requiring a hearing.

(i) Representation of the debtor at the confirmation hearing, but not including an evidentiary hearing.

(j) Representation of the debtor in connection with at least two 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.

(k) Representation of the debtor on motions to avoid liens.

(l) Representation of the debtor on one motion to reinstate stay.

(m) Representation of the debtor on one motion to reinstate case.

(n) Representation of the debtor on routine objections to claims.

(o) Two motions for suspension of payments, two motions to dismiss, removal of wage garnishments, and other motions not specifically referenced herein.

(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. If counsel elects not to seek fees under this Order, or if counsel fails to file with the Court an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys", then counsel shall file a formal application under Bankruptcy Rules 2002 and 2016.

7. 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, 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, and the amount of time expended.

8. 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), subject to other restrictions, such as fixed pays.

9. For cause, the Court may order the reduction of fees.

10. 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 50% of the unpaid balance of the total fee that the debtor agreed to pay up to $625.00.

11. This Order does not limit the right 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 debtors had previously consented in writing to pay the requested fees. Specifically, the Chapter 13 Trustee is encouraged to comment on fees for attorneys engaging in actions or inaction resulting in delay, unnecessary work, abuse of the process, failing to provide complete, competent or timely representation, or such other matters as are appropriate. The Court may consider attorneys' effective and efficient use of Electronic Case Filing and all other procedures in determining attorney fee entitlements, including the entitlement to the presumptive fee set forth herein.

/s/ Russ Kendig
RUSS KENDIG
U.S. BANKRUPTCY JUDGE

**EXHIBIT A TO ADMINISTRATIVE ORDER 05-06**

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

| | | |
|---|---|---|
| In Re: | ) | Chapter 13 |
| | ) | |
| | ) | Case No. |
| | ) | |
| Debtor(s) | ) | Judge Russ Kendig |
| | ) | |

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

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. In order to ensure that debtors and their attorneys understand their rights and responsibilities in the bankruptcy process, the following guidelines provided by the Court are hereby agreed to by the debtors and their counsel.

This document is not a fee agreement. Debtors and attorneys are encouraged to execute fee agreements and should review Administrative Order No. 05-06 as to services that must be provided within certain fixed fees.

**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.

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 a 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, such as mortgages 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.

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. Explain to the debtor that the first plan payment must be made to the Trustee within 30 days of the date that the plan is filed.

7. Advise the debtor of the requirement to attend the §341 Meeting of Creditors and bring to the meeting a valid, unexpired, government issued picture identification, proof of social security number, most recent tax return, two (2) current concurrent paystubs for each debtor, and proof of car insurance.

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, and schedules, as well as any required amendments thereto.

**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 any creditors that the debtor has agreed to pay directly, and, if appropriate, maintain proper insurance coverage and pay post-petition tax obligations concerning the same in a timely fashion.

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 any long-term loan or lease agreements.

The **attorney** agrees to:

1. Continue to represent the debtor through the conclusion of the case, whether by dismissal or discharge.

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 and advise debtor about documents required for the 341 meeting.

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, 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 executed copies of it to the debtor and the Chapter 13 Trustee.

Dated: _____ _____
Debtor

Dated: _____ _____
Debtor

Dated: _____ _____
Attorney for Debtors(s)