

DEC - 1 2015

By: 
M. Regina Thomas, Clerk
Deputy Clerk

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA**

IN RE: :
: :
COMPENSATION OF ATTORNEYS : GENERAL ORDER NO. 18-2015
FOR DEBTORS IN CHAPTER 13 CASES :
:

**ORDER WITH REGARD TO COMPENSATION
OF ATTORNEYS FOR DEBTORS IN CHAPTER 13 CASES**

This Order is effective as to all pending cases and cases filed on or after the date of the entry of this Order. It replaces all other General Orders with respect to compensation of attorneys for the debtor in Chapter 13 cases.

This Order does not establish a particular fee or method of payment for debtor's attorney in Chapter 13 cases. Instead, it establishes appropriate procedures for attorneys for debtors to utilize in charging and collecting attorneys' fees in Chapter 13 cases. The fee and method of payment agreed to between the attorney and the debtor must be reasonable in accordance with 11 U.S.C. §330 (a)(1) and (a)(4)(B) and the ethical requirements of the State Bar of Georgia. Pursuant to 11 U.S.C. §329(b), the Court may order the return of excessive fees. All terms and conditions of the agreement between the debtor and the attorney must be disclosed pursuant to Fed. R. Bankr. P. 2016(b) ("2016(b) Statement").

It is hereby Ordered:

1. Attorneys representing debtors in Chapter 13 cases must represent the debtor in all matters related to the case which affect the debtor's interests unless the attorney is permitted to withdraw by order of the court. BLR 9010-5.

2. To pay debtor's attorneys' fees through the Chapter 13 plan, the plan filed by the debtor must state with specificity the nature of the fee to be paid to debtor's attorney through the plan and the method of payment. If, for example, a debtor and debtor's attorney agree upon a "flat fee" for all services a case may require, this fact must be clearly and conspicuously set forth in the plan, together with the means by which and at what intervals that fee is to be paid. Likewise, if a debtor and debtor's attorney agree upon an hourly billing arrangement, the plan must provide sufficient information regarding the arrangement to allow thorough review by all interested parties. If a debtor and debtor's attorney agree to a set fee schedule tied to specific tasks, such schedule must be included in the agreement. If a debtor and debtor's attorney enter into a fee agreement that may result in additional fees being requested by application, the plan should describe how such additional fees should be disbursed and describe the effect on payments to affected creditors so that the fee arrangement in each case is clear and unambiguous and all interested parties have the opportunity to review and respond to the arrangement prior to confirmation of the plan. Upon confirmation of the plan, the fees disclosed therein are allowed as administrative expenses under 11 U.S.C. § 503(b), subject to the terms of this Order and the confirmed plan.

3. The Chapter 13 plan filed by a debtor must also state with specificity whether the debtor directs the Chapter 13 Trustee to pay debtor's attorney from funds being held by the Chapter 13 Trustee at the time of any conversion of the case prior to or after confirmation of the plan. With this direction from debtor, and appropriate disclosure by debtor's attorney discussed below, the Chapter 13 Trustee is authorized to deliver to debtor's attorney the unpaid amount of the agreed upon fees not to exceed (i) \$2,000.00 upon a pre-confirmation conversion and (ii) the allowed fees upon a post-confirmation conversion. Any payments made to debtor's attorney prior to conversion shall be applied to these fees.

4. If dismissal of a Chapter 13 case occurs prior to confirmation, the debtor's attorney shall be allowed an administrative expense in the amount of \$2,000.00 or the fee set forth in the 2016(b) Statement, whichever is less, pursuant to 11 U.S.C. § 503(b), subject to objection, unless the court orders otherwise. Debtor's attorney may file a fee application in compliance with Fed. R. Bankr. P. 2016(a) for any fees sought over \$2,000.00 but it must be filed within 10 days of the dismissal. Any payments made to debtor's attorney prior to dismissal shall be applied to this allowed administrative expense. The Chapter 13 Trustee shall be authorized to pay the amount allowed herein or pursuant to any fee application from the funds available at dismissal pursuant to 11 U.S.C. § 1326(a)(2).

5. If the debtor's case is dismissed after confirmation of the plan, the Chapter 13 Trustee is authorized to pay debtor's attorney any allowed fees that are unpaid from the funds available.

6. The 2016(b) Statement must be filed prior to the payment of any fees and must describe all fees received prior to filing and the amounts and method of any future disbursements. The 2016(b) Statement must specifically disclose any direction given by the debtor described in Paragraph 3 above.

7. Attorneys' fees disbursed in accordance with debtor's confirmed plan shall be made from funds available after payment of the Chapter 13 Trustee's fees and expenses and, if applicable, any payments due under 11 U.S.C. §1326(a)(1)(B) or (C).

8. Debtor's counsel shall not accept fees from a debtor after a case is filed without prior application to the Court and an Order allowing same unless such distributions are described in debtor's plan, are made by the Chapter 13 Trustee, and are allowed by the confirmation order.

9. Any fee arrangement agreed upon by the debtor and debtor's counsel is subject to objection by any party in interest.

10. Prior to filing a Chapter 13 petition, debtor's attorney shall provide the debtor a copy of the attached "Rights and Responsibilities" and shall certify same in the 2016(b) Statement. Failure of an attorney to perform all of the duties set forth in said Rights and Responsibilities may result in the reduction or disgorgement of attorneys' fees in such amount as the Court finds appropriate.

11. Any fee agreement may be modified as appropriate for the circumstances of the case at the Court's discretion. A modification that results in a reduced fee will not constitute grounds for withdrawal by debtor's counsel, nor will it reduce the duty counsel has to the debtor. Any allowed fees paid in conjunction with a particular case shall be interim in nature, subject to review, disallowance and disgorgement upon request of any party in interest or *sua sponte* by the Court.

IT IS ORDERED, this 1 day of December, 2015.



C. Ray Mullins
Chief United States Bankruptcy Judge
For the Court