

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

JAN - 6 2021

By: *Annie Meyer*
Deputy Clerk

IN RE: :
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FEES, EXPENSES, AND COSTS OF : **GENERAL ORDER**
ATTORNEYS FOR DEBTORS IN : **NO. 42-2020**
CHAPTER 13 CASES :

**AMENDED AND RESTATED ORDER WITH REGARD TO FEES, EXPENSES
AND COSTS OF ATTORNEYS FOR DEBTORS IN CHAPTER 13 CASES**

General Order 42-2020, entered by the Court on November 18, 2020, is hereby amended and restated to provide that §3.3.2 regarding the use of the Court’s Voluntary Notice Procedures, applies to all pending cases. There remainder of the order remains unchanged and establishes procedures for attorneys to utilize in charging and collecting attorney’s fees, expenses, and costs in connection with representation of Debtors in Chapter 13 cases in accordance with the Local Form for Chapter 13 plans that the Court adopted in General Order 41-2020 (the “Local Form”). As used in this Order, “Debtor” includes both debtors in a joint Chapter 13 case, and “Trustee” means the Chapter 13 Trustee in the case.

This Order establishes no particular fee or method of payment of the attorney’s fees, expenses, and costs. The agreement between the attorney and the Debtor must provide for reasonable fees 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, expenses, and costs. Allowable expenses and costs may include the payment of the fee required for filing the case. All terms and

conditions of the agreement between the Debtor and the attorney must be disclosed in the statement that Rule 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) requires (the “2016(b) Statement”).

1.0 Attorney must represent Debtor in all matters. Attorneys representing Debtors in Chapter 13 cases must represent the Debtor in all matters related to the case that affect the Debtor’s interests unless the attorney is permitted to withdraw by order of the Court. See N.D. Ga. Bankruptcy Local Rule 9010-5.

2.0 Use of Local Form § 4.3 for payment of attorney’s fees, expenses, and costs through the Chapter 13 plan.

2.1 General rule. Local Form § 4.3 permits the payment of the fees, expenses, and costs of the Debtor’s attorney from payments that the Debtor makes to the Trustee under the plan. The costs may include an advance of the Debtor’s filing fee. Section 4.3 applies when the agreement between the Debtor and the attorney involves either (A) a “flat fee” for all services in the case; or (B) an initial “flat fee” for services commonly required in the case prior to confirmation of the plan and additional fees, expenses, and costs for specific tasks pursuant to a set fee schedule for the specified tasks or on an hourly basis. Any provisions for additional fees, expenses, and costs must be included in the agreement between the Debtor and the attorney and disclosed in the 2016(b) Statement.

2.2 Nonstandard provision required for certain fees, expenses, and costs. Local Form § 4.3 is not applicable for the allowance of fees, expenses, and costs if the fee agreement between the Debtor and the attorney provides for fees on an hourly basis or if the fee agreement does not contemplate a flat fee for most services prior to confirmation of the plan. For fee agreements of this nature, the plan must include a

nonstandard provision in Local Form § 8 that provides for allowance and payment of the attorney's fees, costs and expenses. The 2016(b) Statement must contain sufficient information regarding the fee arrangement to allow thorough review by the Court and all parties in interest. The nonstandard provision must state whether Local Form § 4.3 will govern disbursement to the attorney of fees, costs, and expenses. If so, the nonstandard provision must state: (A) an estimate of the fees, expenses, and costs that the Debtor and the Debtor's attorney anticipate will be required during the case and a monthly amount to be paid to the attorney as a monthly amount under Local Form §4.3 to the extent that they are allowed; (B) that, pending allowance of the attorney's fees, expenses, and costs, the Trustee will reserve funds otherwise payable to the attorney under Local Form § 2.6 and for disbursement of the reserved funds to the extent that the attorney's fees, expenses, and costs are allowed; and (C) that any funds reserved in excess of the allowed amounts shall be treated as a Regular Payment under Local Form § 2.2. Otherwise, the nonstandard provision must state how the allowed attorney's fees, expenses, and costs will be paid.

3.0 Allowance of fees, expenses, and costs of Debtor's attorney.

3.1 Allowance of fees, expenses, and costs of Debtor's attorney set forth in Local Form § 4.3; allowance of additional amounts. Upon confirmation of the plan, the unpaid fees, expenses, and costs of the Debtor's attorney set forth in Local Form § 4.3 are allowed as administrative expenses under 11 U.S.C. § 503(b) subject to the terms of this Order and of the confirmed plan. The Debtor's attorney must file an application for allowance of additional fees, expenses, and costs that are not set forth in Local Form § 4.3. The application must describe how the

allowance and payment of the additional fees, expenses, and costs, will affect distributions to creditors under the plan.

3.2 Allowance of fees, expenses, and costs of Debtor's attorney provided for in nonstandard provision. If the fees, expenses, and costs of the Debtor's attorney are the subject of a nonstandard provision in accordance with § 2.2 of this Order, the Debtor's attorney must file an application for allowance of the fees, expenses, and costs in accordance with Bankruptcy Rule 2016.

3.3 Procedure for allowance of fees, expenses, and costs of Debtor's attorney. The following applies when this Order requires an application for allowance of any fees, expenses and costs of the Debtor's attorney:

3.3.1 Upon filing such an application, the Debtor's attorney may schedule a hearing using the self-calendaring procedure of the judge assigned to the case.

3.3.2 Alternatively, the Debtor's attorney may use the Voluntary Notice Procedure set out in BLR 9014-2 and General Order 24-2018.

4.0 Payment of fees, expenses, and costs of attorney for Debtor upon conversion to Chapter 7 or dismissal of case. The following provisions apply when the plan filed with the Court contains Local Form §§ 4.3(e), (f), (g), or (h), as applicable, or if a nonstandard provision with regard to the Debtor's fees, expenses, and costs contains a substantially similar provision:

4.1 Conversion to Chapter 7 before confirmation. If (A) the case is converted to Chapter 7 before confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; (C) the 2016(b) Statement discloses that the Debtor has directed the Trustee to disburse funds to the Debtor's attorney to pay unpaid fees upon conversion; and (D) Local Form § 4.3(e) or a similar provision so provides, then the

Trustee is authorized to deliver to the Debtor's attorney, from funds available, the amount equal to (X) the unpaid amount of the fees, expenses, and costs of the Debtor's attorney, not to exceed the sum of \$2,500 and any filing fee advanced by Debtor's counsel, less (Y) any payments to Debtor's attorney prior to conversion.

4.2 Dismissal before confirmation. Unless the Court orders otherwise, if (A) the case is dismissed before confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; and (C) Local Form § 4.3(f) or a similar provision so provides, then the Debtor's attorney shall be allowed an administrative expense, subject to objection, in the amount of (X) the smaller of (i) the sum of \$ 2,500 and any filing fee advanced by Debtor's counsel or (ii) the amount of fees, expenses, and costs set forth or estimated in the plan, less (Y) any payments to Debtor's attorney prior to dismissal. Debtor's attorney may file a fee application in compliance with Bankruptcy Rule 2016(a) to request allowance of any fees, expenses, and costs in excess of the amount stated above, but it must be filed within 14 days of the dismissal. The Trustee is authorized to pay from funds available, after payment of the Trustee's fees and, if applicable, any payments due under 11 U.S.C. § 1326(a)(1)(B) or (C) and in accordance with the plan, the amount allowed herein or pursuant to any fee application at dismissal pursuant to 11 U.S.C. § 1326(a)(2).

4.3 Conversion to Chapter 7 after confirmation. If (A) the case is converted to Chapter 7 after confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; (C) the 2016(b) Statement discloses that the Debtor has directed the Trustee to disburse funds to the Debtor's attorney to pay unpaid fees upon conversion; and (D) Local Form § 4.3(g) or a similar provision so provides, then the

Trustee is authorized to deliver to the Debtor's attorney from funds available, the unpaid amount of the allowed fees, expenses, and costs of the Debtor's attorney.

4.4 Dismissal after confirmation. Unless the court orders otherwise, if (A) the case is dismissed after confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; and (C) Local Form § 4.3(h) or a similar provision so provides, then the Trustee is authorized to pay from funds available, after payment of the Chapter 13 trustee's fees and, if applicable, any payments due under 11 U.S.C. § 1326(a)(1)(B) or (C) and in accordance with the plan, the unpaid amount of the allowed fees, expenses, and costs of the Debtor's attorney.

5.0 Filing and content of 2016(b) Statement. The 2016(b) Statement must:

5.1 Be filed before the payment of any fees, expenses, and costs of the Debtor's attorney in the bankruptcy case;

5.2 Describe all fees, expenses and costs received before the filing of the case and the amounts and method of any future payments;

5.3 Disclose any direction given by the Debtor with regard to disbursement of funds held by the Trustee upon conversion of the case, as set forth in Local Form §§ 4.3(e) and (g); and

5.4 Certify that the attorney has provided the Debtor a copy of the "Rights and Responsibilities" as set forth in § 8.0 of this Order.

6.0 Attorney for Debtor cannot accept fees from Debtor after filing of case except as the Debtor's plan and this Order permit. The attorney for the Debtor shall not accept payment of fees from a Debtor after the filing of the Debtor's case except as set forth in the Debtor's plan and as set forth in this Order.

7.0 Objections regarding fees, expenses, and costs of Debtor's attorney.

Any agreement between the Debtor and the Debtor's attorney is subject to objection by any party in interest. Any party in interest may object to allowance of any fees, costs, and expenses of Debtor's attorney.

8.0 Statement of rights and responsibilities. Before filing a Chapter 13 petition on behalf of a Debtor, the attorney for the Debtor must provide the Debtor a copy of the statement of Rights and Responsibilities attached as Exhibit A and shall certify same in the 2016(b) Statement. Failure of an attorney to perform all of the attorney's duties set forth in the statement of Rights and Responsibilities may result in the reduction or disgorgement of fees, expenses, and costs in such amount as the Court concludes is appropriate.

9.0 Modification of fee agreement by the Court. The Court in its discretion may modify any agreement between the Debtor and the Debtor's attorney with regard to fees, expenses, and costs in connection with services rendered in connection with representation of the Debtor in the case. A modification that results in a reduced fee will not constitute grounds for the attorney for the Debtor to withdraw, and it will not reduce the duty that the attorney has to the Debtor.

10.0 Interim nature of payment of fees, expenses, and costs of Debtor's attorney. Any allowed fees, expenses, and costs of the Debtor's attorney paid in conjunction with the case shall be interim in nature and subject to review, disallowance, and disgorgement upon request of any party in interest or *sua sponte* by the Court.

11.0 Effective Date; Superseding of prior General Orders; Transition.

11.1 This Order is effective December 1, 2020.

11.2 In cases to which this Order applies, this Order supersedes General Order No. 18-2015, Compensation of Attorneys for Debtors in Chapter 13 Cases and General Order 22-2017 with Regard to Fees, Expenses, and Costs of Attorneys for Debtors in Chapter 13 Cases. General Order No. 18-2015 and General Order No. 22-2017 remain in effect with regard to cases to which this Order does not apply.

11.3 This Order applies: (A) in all cases filed on or after December 1, 2020; (B) in all cases filed before December 1, 2020, that are converted to Chapter 13 on or after December 1, 2020; and (C) in all cases filed before December 1, 2020, in which the Debtor did not file a plan before December 1, 2020, PROVIDED that §3.3.2 of this Order also applies to all pending cases.

IT IS SO ORDERED this 6th day of January, 2021.

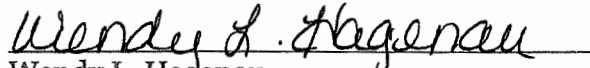

Wendy L. Hagenau
Chief United States Bankruptcy Judge
For the Court

EXHIBIT A

Rights and Responsibilities Statement

As adopted by General Order 18-2015

(12/1/2015)

SPECIAL ANNOTATED VERSION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

**RIGHTS AND RESPONSIBILITIES STATEMENT BETWEEN
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS**

Chapter 13 of the Bankruptcy Code gives each debtor (“Debtor”) important rights, such as the right to keep property that could otherwise be lost through repossession, foreclosure or liquidation by a Chapter 7 Trustee. Chapter 13 also places burdens on Debtors, however, such as the burden of making complete and truthful disclosures of their financial situation and prompt payments as required by the Plan. It is important for Debtors who file a Chapter 13 bankruptcy case to understand their rights and responsibilities to the court, the Chapter 13 Trustee and to creditors. Debtors are entitled to expect certain services to be performed by their attorneys, but Debtors also have responsibilities to their attorneys. To assure that Debtors and their attorneys understand their rights and responsibilities in the Chapter 13 process, the judges of the Bankruptcy Court for the Northern District of Georgia have approved this statement of rights and responsibilities of Debtors and their attorneys in Chapter 13 cases that include, but are not limited to the following, as each case’s facts may require more of both Debtor and Debtor’s attorney.

BEFORE THE CASE IS FILED

EACH DEBTOR SHALL:

1. Discuss with the attorney the Debtor’s objectives in filing the case.
2. Timely provide the attorney with full and accurate financial and other information, including, but not limited to:
 - (a) Copies of pay stubs or other evidence of payment received before the date of filing of the petition, as requested by the attorney;¹
 - (b) Copies of all Federal income tax returns (or transcript of the returns) as requested by the attorney.²
3. Inform the attorney of any and all prior bankruptcy cases Debtor has filed.³
4. Provide copies of all bills, notices, statements or communications from creditors, as requested by attorney.⁴

THE ATTORNEY SHALL:

1. Personally counsel Debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss with Debtor the procedures in both Chapters, as well as non-bankruptcy options, and answer Debtor's questions.
2. Personally explain to Debtor the requirement of obtaining a certificate from an approved nonprofit budget and credit counseling agency.⁵
3. Personally explain to Debtor that the attorney is being engaged to represent Debtor on all matters arising in the case, and explain how and when the attorney's fees and the trustee's fees are determined and paid.
4. Personally review with Debtor and obtain Debtor's signature on the completed petition, plan, as well as the Statement of Financial Affairs, Income and Expenses, and other statements as well as the various schedules (the "Schedules"), and all amendments thereto, whether filed with the petition or later. The Schedules may be prepared initially with the help of clerical or paralegal staff of the attorney's office, but personal attention of the attorney is required for the review and signing by Debtor.
5. Timely prepare and file Debtor's petition, plan, Schedules, statement of monthly net income⁶, and any other required pleading.
6. Explain to Debtor how, when and where to make all necessary payments, including both payments that must be made directly to creditors and payments that must be made to the Chapter 13 Trustee, with particular attention to housing, vehicle, and domestic support obligation payments.⁷
7. Advise Debtor of the need to maintain appropriate insurance especially for house and vehicle.
8. Inform Debtor of the need to potentially provide attorney with copies of each Federal income tax return (or transcript of the return) for each tax year ending while the Debtor is in the case.⁸

AFTER THE CASE IS FILED

EACH DEBTOR SHALL:

1. Appear punctually at the meeting of creditors (also called the "341 meeting") with recent proof of income, a photo identification card, and proof of Social Security number. Acceptable forms of proof of identification are: driver's license; government ID, state picture ID; student ID, U.S. passport; military ID; resident alien card. Acceptable forms of proof of Social Security number are: Social Security Card; medical insurance card; pay

stub; W-2 form; IRS form 1099; Social Security Administration Report. Debtor must be present both in time for check-in and when the case is called for the actual examination.

2. Make the required payments to Trustee and to such creditors as are being paid directly, or, if required payments cannot be made, to notify the attorney immediately.
3. Promptly provide attorney, upon their request, evidence of all payments made directly to creditors and Trustee, including amount and date of payment.⁹
4. Notify the attorney immediately of any change in Debtor's address or telephone number.
5. Inform the attorney immediately of any wage garnishments, liens or levies on assets that occur or continue after the filing of the case.
6. Contact the attorney immediately if Debtor loses employment, is "laid off" or furloughed from work or has any significant change in income; experiences any other significant change in financial situation, including serious illness, personal injury, lottery winnings, or an inheritance.
7. Notify the attorney immediately if Debtor is sued or wishes to file a lawsuit, including divorce, matters regarding personal or property injury (including any worker's compensation matters), and any other matter in which Debtor is involved in a lawsuit or legal action outside this court.
8. Inform the attorney immediately if any tax refunds to which Debtor is entitled are seized or not received when due from the IRS or Georgia Department of Revenue.
9. Contact the attorney before buying, refinancing, or contracting to sell real property, and before entering into any loan agreement.
10. Complete an instructional course concerning personal financial management prior to receiving a discharge.¹⁰

THE ATTORNEY SHALL:

1. Advise the Debtor of the requirement to attend the meeting of creditors, and notify or remind Debtor of the date, time and place of the meeting, in such detail as is helpful or necessary to Debtor's appearance.
2. Inform Debtor that Debtor must be punctual and, in the case of a joint filing, that both spouses must appear at the same meeting.
3. Provide competent legal representation for Debtor at the meeting of creditors, appear in time for check-in and the actual examination and, unless excused by Trustee, for the

confirmation hearing.

4. If an attorney not employed by Debtor's attorney's law firm (a "contract" attorney) will be attending Debtor's 341 meeting or any court hearing, personally explain to Debtor in advance the role and identity of the contract attorney, obtain Debtor's written permission for the contract attorney to represent Debtor and provide the contract attorney with the file in sufficient time to review and discuss it with Debtor prior to such representation.
5. Make all reasonable efforts for the individual attorney who met with Debtor to attend the § 341 meeting or any other court hearing. However, if that attorney is unavailable then an attorney will be present on behalf of the Debtor with knowledge of Debtor's case and authority to make any modifications to Debtor's plan deemed necessary.¹¹
6. Timely submit to Trustee properly documented proof of income for each Debtor, including business reports for self-employed debtors, and all required pay advises and tax returns or transcripts.¹²
7. Timely respond to objections to plan confirmation, and where necessary, prepare, file and serve amended Schedules or an amended plan.
8. Timely prepare, file, and serve any necessary annual financial statements¹³, amended statements and Schedules, and any change of address, in accordance with information provided by each Debtor.
9. Monitor all incoming case information (including, but not limited to, Order Confirming Plan, Notice of Intent to Pay Claims, and 6-month status reports) for accuracy and completeness. Contact promptly Trustee or Debtor regarding any discrepancies.
10. Promptly respond to Debtor's questions through the term of the plan.
11. Timely prepare, file and serve necessary modifications to the plan after confirmation, including modifications to suspend, lower, or increase plan payments.
12. Prepare, file and serve necessary motions to buy or sell property and to incur debt.
13. On or before 60 days after the general bar date, certify the attorney has reviewed claims with Debtor, prepared, filed and served objections to improper or invalid claims and filed claims within 30 days after the bar date for creditors who fail to file claims when such failure will adversely affect Debtor's case or its successful completion and discharge or such failure will adversely affect Debtor after case completion and discharge.
14. Timely confer with Debtor and respond to any motion to dismiss the case, such as for payment default, or unfeasibility, and to motions to increase the percentage payment to unsecured creditors.

15. Timely confer with Debtor and respond to motions for relief from stay.
16. Timely prepare, file and serve appropriate motions to avoid liens.
17. Provide any other legal services necessary for the administration of the case.

ENDNOTES

1. Section 521(a)(1)(B)(iv) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") provides that the debtor shall file copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition. Additionally, this information would be useful in calculating the debtor's "current monthly income" as defined in § 101(10A), and the debtor's "applicable commitment period" as specified in § 1325(b)(4).

2. Section 1308(a) provides that not later than the day before the date on which the meeting of creditors is first scheduled to be held, the debtor shall file with appropriate tax authorities all tax returns for all tax periods ending during the 4 year period ending on the date of the filing of the petition. Also, § 521(e)(2) states that not later than 7 days before the date first set for the first meeting of creditors, the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year ending immediately before the commencement of the case.

3. Some of the most extensive changes in the Act deal with § 362. Section 362(c)(3) provides that the automatic stay terminates on the 30th day after the filing of the case if the debtor had a case pending during the previous year which was dismissed. Section 362(c)(4) states that if a debtor has had two or more cases pending within the previous year which were dismissed, then the automatic stay does not even go into effect. Of course nothing contained herein obviates the need for attorneys to utilize all available methods to ascertain whether their clients have filed cases previously.

4. Substantial changes have been made by the Act pertaining to notice. Section 342(c)(2)(A) specifies how notice may be required to be given by the debtor to a creditor. If, within the 90 days before the commencement of the case, a creditor supplies the debtor in at least two communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor must be sent to such address and shall include such account number.

5. Section 109(h) provides that in order to be a debtor under Title 11, during the 180 day period preceding the date of filing of the petition, the individual must have received from an approved nonprofit budget and credit counseling agency described in § 111(a) an individual or group briefing that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

6. See § 521(a)(1)(B)(v), which states that in addition to schedules and statement of financial affairs, a debtor must file a statement of the amount of monthly net income, itemized to show how the amount is calculated.

7. "Domestic support obligation" is a defined term under § 101(14A). Pursuant to § 1307(c)(11), failure of a debtor to pay any post-petition domestic support obligation may be the basis for the dismissal or conversion of the case. Section 1325(a)(8) makes the payment of post-petition domestic support obligations a pre-requisite for the confirmation of the plan.
8. See § 521(f) which states, that at the request of any party in interest, a debtor shall file with the Court a copy of each federal income tax return with respect to each tax year ending while the case is pending.
9. Section 1326(a)(1)(C) states that if adequate protection payments are made directly to a creditor, the trustee must be provided with evidence of the payment including the amount and date of payment.
10. Section 1328(g)(1) mandates that the court shall not grant a discharge to a debtor unless the debtor has completed an instructional course concerning personal financial management as described in § 111.
11. It is anticipated that at the meeting of creditors parties will have an opportunity to negotiate for purposes of resolving issues pertaining to the proposed treatment (i.e. value, monthly distribution... e.g.) of creditors under the debtor's plan. The Court expects that counsel for debtors have the authority to negotiate binding arrangements with creditors and the trustee at the meeting of creditors in order to obviate the need for time consuming objections to confirmation to be filed in all instances.
12. See § 521(e)(2)(A)(i) which provides that not later than 7 days before the date first set for the meeting of creditors the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year.
13. Section 521(f)(4) states that at the request of the court, the United States Trustee, or any party in interest, a debtor shall file a statement, under penalty of perjury, of the income and expenditures of the debtor during the most recently concluded tax year and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

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