

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA**

In re:

Compensation of Debtor's	)	
Counsel in Chapter 13 Cases;	)	Standing Order No. 22-001
Guidelines and Procedures for	)	
Chapter 13 Fee Applications	)	

**ORDER ON FEES FOR DEBTOR'S COUNSEL IN CHAPTER 13 CASES;  
ADOPTION OF AMENDED GUIDELINES FOR FEE APPLICATIONS IN  
CHAPTER 13 CASES FILED ON OR AFTER FEBRUARY 15, 2022**

The Court has determined that adoption of the procedures and guidelines specified in this Order will facilitate and provide for uniformity in the consideration of compensation for debtor's counsel in Chapter 13 cases.

NOW, IT IS THEREFORE ORDERED that:

1. Standing Order 15-1 entered on June 26, 2015, shall not apply to cases filed on or after February 15, 2022.

2. This Standing Order and the Amended Guidelines for Fee Applications in Chapter 13 Cases shall be effective February 15, 2022 as follows:

- A. All cases filed on or after February 15, 2022 may elect to charge the presumptive base fees as set forth below and in Amended Exhibit 1.
- B. All cases pending or filed on or after February 15, 2022 are subject to this Order for all non-base fees as set forth in the "Amended Guidelines," attached as Exhibit 1 to this Order.

**3. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER DOES NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.**

4. If the initial fee charged to a debtor for routine, expected services in a non-business consumer Chapter 13 case filed on or after February 15, 2022 does not exceed \$4,750.00, a formal application for approval and payment of the unpaid amount through the Chapter 13 plan may not be required if (a) the total fee and the unpaid portion is clearly set forth in the Chapter 13 plan, (b) the fee is consistent with the disclosure of compensation filed under Federal Rule of Bankruptcy

Procedure 2016, and (c) the total pre-confirmation fee does not exceed the reasonable value of actual services. Said amount shall include all routine costs in the case including, but not limited to, copying, postage, and communication fees; it shall not include any filing fees or actual costs paid to outside entities not owned or related to counsel for the debtor for credit reports, credit counseling and debtor education courses.

5. If the initial fee charged to a debtor for routine, expected services in a **business-related** Chapter 13 case filed on or after February 15, 2022 does not exceed \$5,750.00, a formal application for approval and payment of the unpaid amount through the Chapter 13 plan may not be required if (a) the total fee and the unpaid portion is clearly set forth in the Chapter 13 plan, (b) the fee is consistent with the disclosure of compensation filed under Federal Rule of Bankruptcy Procedure 2016, and (c) the total pre-confirmation fee does not exceed the reasonable value of actual services. Said amount shall include all routine costs in the case including, but not limited to, copying, postage, and communication fees; it shall not include any filing fees or actual costs paid to outside entities not owned or related to counsel for the debtor for credit reports, credit counseling and debtor education courses.

A case will qualify for the presumptive business-related base if one of the following criteria is met:

- A. The debtor qualifies as a business debtor under 11 U.S.C. § 1304; or
- B. The debtor clearly demonstrates, through the plan and schedules, a substantial business impact on the case based on prior business activities and/or future business activities.

The Court requires any counsel claiming a base fee for a business-related Chapter 13 to:

- A. Analyze the viability of the current business operation and its future projections. This includes but is not limited to analyzing average monthly historical receipts for the last two years and analyzing receipt projections for the life of the plan, along with the historical business expenses and those projected as necessary for the future.
- B. Prepare a projected profit and loss statement which summarizes the business operation for the next twelve months and otherwise complies with the requirement of paragraph 8a on Schedule I. This statement will be filed together with Schedule I.
- C. Provide to the Trustee, and to any authorized party who so requests, a copy of documents used in the analysis.

6. Allowable charges for lien searches: Notwithstanding the provisions of paragraphs 4 and 5, given the large geographical nature of the Western District of Virginia, counsel shall be allowed to claim actual and reasonable costs for lien searches, even if performed by counsel for the debtor. If such cost is claimed, it cannot exceed what a third party would have charged unless the attorney provides appropriate evidence to support the higher fee.

- 7. The Chapter 13 plan and Rule 2016(b) statement will be treated as the application

required by Rule 2016(a) and the order confirming the plan will be treated as an order approving compensation. If counsel seeks approval of fees exceeding the presumptive amount, then the fee application must clearly and conspicuously itemize all time expended and costs paid or to be paid. If counsel seeks a fee up to the presumptive amount, the actual reimbursable costs paid by the debtor must be itemized either within the body of the Disclosure of Compensation of Attorney For Debtor (Form B 2030) or within an attachment to the form.

Any objection to allowance and payment of compensation in the amount stated in the Chapter 13 plan must be filed no later than the last day for filing objections to confirmation of the plan. If no objection is filed, the Court may approve the fee and confirm the plan without holding a hearing.

8. Presumptive Services to be provided under presumptive fees of paragraphs 4 and 5:

- A. The initial fee charged in the case shall cover, at a minimum, all services that would reasonably be expected in order to obtain confirmation of a plan, and, ultimately, a discharge, including:
- i. conferences to review the debtor's financial circumstances, including analysis of business profit and losses and business assets in a business-related Chapter 13;
  - ii. preparation and filing of the petition and all required schedules, lists, and statements;
  - iii. preparation and filing of a plan and any amendments thereto in order to obtain confirmation;
  - iv. telephone calls and correspondence with the debtor, Chapter 13 trustee, and creditors throughout the life of the case;
  - v. representation at the meeting(s) of creditors;
  - vi. appearance, if required, at the confirmation hearing(s);
  - vii. review of the claims register, filing and other services related to uncontested objections to claims;
  - viii. filing by the attorney, during the period allowed by Fed. R. Bankr. P. 3004, of any claims not timely filed by the creditor which are necessary to achieve the primary objectives of the debtor's plan (e.g., secured claims and priority claims being paid by the Trustee and non-dischargeable unsecured claims);
  - ix. resolution of issues raised in the Chapter 13 Trustee's initial or supplemental report, objection(s) to confirmation, and/or motion(s) to dismiss, as well as any supplements to such items;

- x. assistance to the debtor in filing any certifications required to obtain a discharge after plan payments are completed;
- xi. motions for relief from the automatic stay filed pre-confirmation and resolved without an evidentiary hearing; and
- xii. motions to extend the stay if applicable.

B. The initial fee shall normally cover routine motions and objections pre-confirmation, excluding separate adversarial proceedings, as well as plan modifications needed to address such issues and matters such as classification of claims, valuations of collateral, interest rates on secured claims, arrearage amounts, pre-confirmation defaults, and amounts to be paid by the debtor.

C. If counsel elects to charge the presumptive fee referenced in paragraphs 4 or 5, then there shall be a presumption that counsel will limit post-confirmation fees to the presumptive amounts set forth in Guideline 2.e. unless good cause is shown.

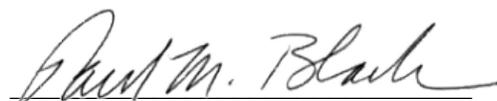
9. Any application for an initial fee in excess of \$4,750.00 for a consumer case or \$5,750.00 for a business-related case or for supplemental fees, regardless of the amount, must conform to Rule 2016(a) and the Guidelines adopted by the Court. The Guidelines include both procedural requirements as well as policy statements.

10. Unless authorized by further order of the Court, the attorney shall not send a bill directly to the debtor following the filing of the petition.

11. Should a case be dismissed prior to confirmation, the debtor's attorney may seek fees up to the lesser of the funds on hand held by the Trustee or the presumptive amount without the need for a formal fee application. The request should be made by separate motion set for hearing upon notice to the debtor and Trustee with an opportunity to object. The motion may be granted by the Court without notice if the debtor and Trustee endorse the order.

12. Nothing in this Order shall be construed to limit or restrict future guidelines as to flat fees for additional services as determined to be appropriate in this district.

Entered this 25th day of January, 2022.

  
Paul M. Black, Chief Judge

  
Rebecca B. Connelly, Judge

Exhibit 1

AMENDED GUIDELINES FOR FEE APPLICATIONS IN  
CHAPTER 13 CASES FILED ON OR AFTER FEBRUARY 15, 2022

1. Purpose

The Amended Guidelines for Fee Applications in Chapter 13 Cases Filed on or after February 15, 2022 (“Amended Guidelines”) have been adopted by the Court to specify the format and procedures for submission of fee applications by attorneys representing the debtor in a Chapter 13 case and to set forth the policies and standards that will normally be followed by the Court in evaluating such applications. Compliance by applicants with the procedural requirements is mandatory, but applicants may apply for a fee at variance with the policy statement provided the application clearly identifies any such variance.

2. Procedural Requirements

- a. NOTWITHSTANDING THE PROVISIONS OF THIS STANDING ORDER AND GUIDELINES, NOTHING PRECLUDES ANY PARTY, INCLUDING THE UNITED STATES TRUSTEE, FROM OBJECTING IN WHOLE OR IN PART TO THE AMOUNT OF THE FEE REQUESTED WHETHER IT BE THE PRESUMPTIVE FEE AMOUNT OR THE ACTUAL FEES REQUESTED. FURTHERMORE, THIS STANDING ORDER AND THESE GUIDELINES DO NOT AUTHORIZE THE FEE TO BE PAID UPON ANY REQUEST, RATHER ONLY AFTER COURT APPROVAL.
- b. Initial fee applications for amounts in excess of \$4,750.00 for consumer cases and \$5,750.00 for business-related cases, and **all** supplemental fee applications in excess of the amount set forth in 2.e., must be supported by detailed, contemporaneous time and expense records **from the beginning of the case** showing, for each discrete activity, the date, time expended, identity of the attorney or paralegal providing the service, and amount requested. If a prior fee application has included time records from the beginning of the case, a subsequent application need include only time and expense records covering the period subsequent to the earlier application provided the current application identifies (by date and docket entry number) the earlier application.
- c. For the purpose of these Guidelines, a “contemporaneous” time or expense record is one made at or near the time of the activity being recorded or the expense being incurred, but in any event no later than the next business day. Any time entry that has been reconstructed because contemporaneous records were not made, or, if made, are not available, must be clearly identified, and an explanation provided for the absence of a contemporaneous record.

- d. Every application for compensation, whether initial or supplemental, shall state the period covered by the application. Time entries should be shown to the nearest tenth of an hour (*i.e.*, the nearest 6 minutes), and travel time should be shown separately from any court appearance or other out-of-office activity to which it relates. Preparation of fee agreements and hearing time regarding fee agreements shall be billed at 75% of the normal hourly rate; billing for travel time for any matter shall not be permitted unless good cause is shown.
- e. An exception to the requirement for contemporaneous time and expense records is allowed where the requested application is solely for one or more of the following post-confirmation services, and the amount requested does not exceed the amount shown:

<b>Description</b>	<b>Amount</b>
Defense of post-confirmation Motion for Relief from the Automatic Stay resolved without evidentiary hearing	\$420.00
Defense of post-confirmation Trustee's Motion to Dismiss for payment default	\$350.00
Post-confirmation modified Plan	\$480.00
Motion to Approve Sale Motion to Approve Refinance Motion to Incur Debt Motion to Approve Loan Modification	\$480.00
Motion to Suspend Payments	\$300.00
Adversary Proceeding (uncontested) including motion for default judgment	\$750.00
Motion to Avoid Lien (uncontested)	\$360.00

Filing of any of these documents in tandem, *i.e.*, as a response to an affirmative pleading and as an affirmative motion, or vice versa, will not permit the party to receive both fees; the party will be entitled to the fee for only one of the matters, unless good cause is shown to justify the application for multiple fees. By way of example, a response to a motion to dismiss followed closely in time by a modified plan would not permit the party to claim a total fee of \$830.00, rather the party would be entitled to \$480.00 at the most.

If the attorney's fee request does not reduce the amounts required to be paid to unsecured creditors to an amount less than that required by 11 U.S.C. §§ 1325(a)(4) or 1325(b), attorney's fees may be paid through the Plan and from the unsecured pool and/or reduce the noticed dividend to unsecured creditors if said request is the first post-confirmation request for attorney's fees. Unless good cause is shown, subsequent requests for attorney's fees must result in an

increase in the Plan funding to pay the fees through case administration.

- f. For each attorney or paralegal providing services, the application shall state the person's name, status (attorney or paralegal), years admitted to practice (if an attorney), hourly rate, total hours, and requested compensation.
- g. The application shall affirmatively state the amount, if any, of posted time and charges written off in the exercise of billing discretion.
- h. An attorney requesting compensation by application in accordance with these Guidelines shall file with the Clerk an application in compliance with these Guidelines. A sample form application is available on the Court's Internet web site <http://www.vawb.uscourts.gov> and can be accessed by clicking the "Forms" button on the Court's Internet home page.
- i. Unless otherwise provided differently in the Plan or confirmation order, attorney's fees provided in the Plan will be disbursed after payment of adequate protection payments and/or secured creditors' payments in equal monthly amounts pursuant to 11 U.S.C. § 1325(a)(5)(iii) and on a pro rata basis together with domestic support obligation claims, if any.
- j. For the purposes of this Standing Order, contested shall mean a matter that results in the attorney's attendance at a hearing where an issue or issues have been placed into dispute, the opposing party appears, evidence is submitted and the matter is argued to the Court.
- k. To the extent possible, the parties should seek to combine orders resolving a matter together with the order granting the fee. For instance, debtor's attorneys may include requests for fees in responsive or affirmative pleadings and the order resolving the matter may include disposition of the matter and request for attorney's fees. If an order combines these matters, the order's heading should specify the matter that is addressed as well as the disposition of the fee request. Alternatively, debtor's attorneys may include their fee request for a post-confirmation amended plan within the amended plan. If this process is not practicable, a fee request may be filed and noticed in accordance with the provisions of 11 U.S.C. § 102(1) and an order may be entered after the expiration of any applicable response deadline.
- l. Service of any fee request, whether contained in a responsive or affirmative pleading or filed as an independent request, must be noticed to all scheduled creditors prior to the expiration of the government bar date. Following the expiration of the government bar date, the fee request need only be noticed to the holders of allowed claims.

### 3. Policy Statement

The Court will not approve charges for time expended for work that is secretarial or

administrative in nature (*e.g.*, sending facsimile transmissions, making copies, taking telephone messages, processing emails or notices from the Court and the like) even if performed by an attorney or paralegal.