

**Local Rule of Bankruptcy Procedure 2016. COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES.**

**(a) Form of Application**

An application for compensation and reimbursement of expenses must:

- (1) contain all information required by Fed. R. Bankr. P. 2016(a);
- (2) disclose the name, hourly rate and work experience of each professional performing services for which compensation is sought;
- (3) comply with the United States Trustee guidelines, when total requested fees and expenses exceed \$10,000.00;
- (4) bill travel time at half-rate unless work was done during travel, in which case the time may be billed at full rate;
- (5) comply with the expense guidelines set forth in *TXEB Appendix 2016*;
- (6) contain the 21-day negative notice language described in LBR 9007(a);
- (7) contain a certificate of service reflecting service as required under subsection (c) of this rule; and
- (8) attach a proposed order granting the application.

**(b) Time Records Required**

All professionals submitting an application under this rule, except auctioneers, real estate brokers, and appraisers, or professionals retained on a fixed-fee or contingent-fee basis, must keep accurate and contemporaneous time records.

**(c) Service**

A complete copy of the application, including all exhibits thereto, must be served on the debtor or the debtor's counsel, the trustee or the trustee's counsel, attorneys for any court appointed committees, and the United States Trustee. The applicant must serve a summary of the fee application upon the master mailing list (matrix) as constituted by the Court on the date of service which:

- (1) identifies the applicant and the capacity of such applicant;
- (2) identifies the title of the application and the date it was filed,
- (3) identifies the amounts sought by the application;

- (4) identifies the time period covered by the application;
- (5) contains the 21-day negative notice language described in LBR 9007(a); and
- (6) contains a notice that a complete copy of the application will be sent to any requesting party at no charge.

If the fee exhibit to the application exceeds twenty-five (25) pages, the applicant must deliver a paper copy of the complete application, including all exhibits thereto, to the Clerk for use by the assigned judge per *TXEB Appendix 5005*.

**(d) Multiple Cases**

In cases involving multiple estates -- absent substantive consolidation or special Court order -- a separate fee application must be filed for each case, and the detail of services and expenses must be apportioned to each estate or charged to the appropriate estate.

**(e) Pre-Petition Retainers**

1. Any professional, regardless of whether employment of that professional must be approved under §§ 327 or 1103 of the Bankruptcy Code, must deposit any pre-petition payment for prospective services (i.e., a “security retainer”) into a trust or IOLTA account. Except as otherwise authorized under these Local Rules, the security retainer must remain in the account until the Court enters an order allowing removal.
2. This requirement shall not apply to pre-petition payments constituting a classic or advance payment (flat fee) retainer, although such retainer must be disclosed pursuant to Fed. R. Bankr. P. 2016(b) and is subject to review under §329 of the Bankruptcy Code.

**(f) Post-Petition Retainers**

1. Unless otherwise authorized by the Court or these Rules, any post-petition payment received by a professional from the debtor or any other person for the benefit of the debtor must be disclosed to the Court and deposited into a trust or IOLTA account as a security retainer. This rule shall not apply to a post-petition payment tendered by a Chapter 7 debtor with funds which do not constitute property of the bankruptcy estate.
2. Unless the Court orders otherwise, any post-petition payment must remain in the trust or IOLTA account until the Court enters an order allowing its removal. Any motion seeking such removal may be combined with an application for an award of post-petition fees and expenses. The motion must contain the 21-day negative

notice language described in LBR 9007(a) and shall be served upon the parties designated by LBR 9013(f). A proposed order shall accompany the motion.

**(g) Motion for Distribution of Retainer in Chapter 11 and 12 Cases**

A motion for distribution of a retainer received by a professional in a Chapter 11 or 12 case may be filed on a monthly basis. Such motion must, at a minimum:

- (1) contain all information required by Fed. R. Bankr. P. 2016(a);
- (2) disclose the name, hourly rate and work experience of each professional performing services for which compensation is sought;
- (3) meet the travel time and expense guidelines referenced in LBR 2016(a);
- (4) utilize the 14-day negative notice language described in LBR 4001(a);
- (5) contain a certificate of service reflecting service on the United States Trustee, the trustee (if one has been appointed), the ten (10) largest unsecured creditors or any committee appointed under the Bankruptcy Code or its authorized agent, and any party which has filed a notice of appearance or request for notice in the case; and
- (6) attach a proposed order granting the motion.

The motion for distribution of retainer shall be treated as an application for interim compensation under §331 of the Bankruptcy Code and, if no objection is filed within 14 days of the service thereof, the filing professional may withdraw from the retainer the amounts set forth as interim compensation without the necessity of a formal order.

**(h) Attorney's Fees in Chapter 13 Cases**

1. An attorney for a Chapter 13 debtor must file an application for compensation and reimbursement in compliance with subsections (a) and (b) of this rule except in the following circumstances:
  - (A) If the attorney has not rendered legal services pertaining to automatic stay litigation occurring in the case, a formal fee application is not required so long as the attorney requests \$3,000 or less for pre-petition and post-petition services and expenses rendered or incurred prior to the earlier of:
    - (1) the first successful post-confirmation modification of a Chapter 13 plan which occurs subsequent to the filing of the Trustee's Recommendation Concerning Claims; or
    - (2) the filing of a certification by the Chapter 13 Trustee that all proofs of claim have been reconciled with the terms of the confirmed plan without the necessity of a plan modification. The \$3,000

shall include all pre-petition payments received by such attorney. This threshold amount may be increased by \$500 in a case involving a debtor engaged in business when so certified by the Chapter 13 Trustee in the Trustee's confirmation report.

(B) If the attorney has rendered legal services pertaining to automatic stay litigation occurring in the case, a formal fee application is not required so long as the attorney requests \$3,500 or less for pre-petition and post-petition services and expenses rendered or incurred prior to the earlier of: (1) the first successful post-confirmation modification of a Chapter 13 plan which occurs subsequent to the filing of the Trustee's Recommendation Concerning Claims; or (2) the filing of a certification by the Chapter 13 Trustee that all proofs of claim have been reconciled with the terms of the confirmed plan without the necessity of a plan modification. The \$3,500 shall include all pre-petition payments received by such attorney. This threshold amount may be increased by \$500 in a case involving a debtor engaged in business when so certified by the Chapter 13 Trustee in the Trustee's confirmation report.

2. The Chapter 13 trustee shall review a formal fee application and may file a recommendation, comment or objection.
3. Unless the Court orders otherwise, the entry of a Chapter 13 confirmation order shall authorize an attorney for a Chapter 13 debtor to withdraw a retainer in full or partial satisfaction of the attorney's outstanding fee without the necessity of a formal order.
4. Fees in excess of the retainer held by an attorney for a Chapter 13 debtor must be paid through the Chapter 13 plan as a Bankruptcy Code § 503(b)(2) administrative expense.
5. A formal fee application must be filed for allowance of fees and expenses for legal services rendered to a Chapter 13 debtor subsequent to the time period outlined in subsection (h)(1) unless such services pertain to a successful post-confirmation modification of a Chapter 13 plan achieved during such subsequent time period and such modification motion contains a detailed request for such fees.
6. To obtain a fee award from the funds held by the Chapter 13 Trustee that are otherwise subject to return to the debtor under §1326(a)(2) because the case has been dismissed or converted prior to the entry of a plan confirmation order, the attorney must file an "Application for Administrative Expense by Chapter 13 Debtor's Attorney" which shall contain 21-day negative notice language and shall be served only upon the debtor(s) and any other party otherwise entitled to a share

of those funds pursuant to an order of the Court. Such application must be filed prior to the dismissal or conversion of the case or it will be terminated by the Court without notice. If the application has not completed the required notice period prior to the dismissal of the case, the Court shall retain jurisdiction to consider the application when ripe for adjudication pursuant to the authority recognized in *Querner v. Querner (In re Querner)*, 7 F.3d 1199 (5th Cir. 1993) without the necessity of an order specifically retaining jurisdiction for that purpose.

7. A party in interest always has the right to object to the reasonableness of a fee request. This rule does not establish minimum, maximum, or average fees, nor does it establish the reasonableness of a fee in a particular case.

(i) **Substitution of Attorney for Debtor**

In addition to filing a statement under Fed. R. Bankr. P. 2016(b), an attorney who enters a case as substitute counsel for the debtor shall file a Notice of Appearance in that case, with notice to the master mailing list (matrix) as constituted by the Court on the date of service, which clearly sets forth the substitution of counsel.