

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

PRESUMPTIVELY REASONABLE  
ATTORNEYS' FEES FOR DEBTOR'S  
COUNSEL IN CHAPTER 13 CASES  
ASSIGNED TO JUDGE WARREN

ADMINISTRATIVE ORDER  
2024-01-PRW

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**PREAMBLE**<sup>1</sup>

The procedures and guidelines in this Administrative Order provides uniformity in identifying the “Base Legal Services” required to be provided by a Chapter 13 Debtor’s Attorney, and the amount of attorneys’ fees deemed to be presumptively reasonable under 11 U.S.C. § 330(a), without the need for either the filing of a fee application with supporting time records or a hearing. This Administrative Order establishes the fee arrangement options available to the Debtor’s Attorney (flat fee or hourly fee) and the procedures followed by Judge Warren with respect to attorneys’ fees and costs in representing a Chapter 13 Debtor.<sup>2</sup>

**The “presumptively reasonable attorneys’ fees” established by this Administrative Order are just that: *presumptively reasonable for administrative convenience—but an award of those flat fees is not guaranteed.* The Court will reduce attorneys’ fees *sua sponte* or in response to an objection by the Chapter 13 Trustee, the United States Trustee, or a party in interest, if the Court finds either the amount of the attorneys’ fee requested or the method of payment to be unreasonable under the particular facts before the Court. Attorneys seeking compensation under this Administrative Order are expected to exercise restraint**

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<sup>1</sup> The Court utilized the policy adopted by the Northern District of New York as a model, with the kind permission of Chief Judge Kinsella.

<sup>2</sup> The fee arrangement between the attorney and the Debtor must be specified in both the Retainer Agreement and the Rule 2016(b) Statement.

**and sound billing judgment, to ensure that the attorneys' fees charged are fair and reasonable in each Chapter 13 case.**

**BASE LEGAL SERVICES**

The Debtor's Attorney is required to provide the following Base Legal Services, without exception, when compensation is sought under the Presumptively Reasonable Base Legal Fee (Flat-Fee) Policy:

1. Participation in consultations, meetings, and/or communications with the Debtor that take place before the filing of the Chapter 13 petition;
2. Preparation, filing, and service of the voluntary petition, schedules, statements, affirmations, Chapter 13 Plan, wage order(s) if applicable, and any other documents required to be filed or executed upon the commencement of a Chapter 13 case;
3. Preparation, filing, and service of any amendments to the petition, schedules, statements, Chapter 13 Plan and other documents, where necessary to obtain a Confirmation Order;
4. Collect all required financial documents and provide them to the Chapter 13 Trustee;
5. Appearance at the § 341 meeting with the Debtor and all adjourned § 341 meetings;
6. Appearance at the confirmation hearing and all adjourned confirmation hearings;
7. Drafting, filing, and service of responses or opposition to any objection(s) to confirmation;
8. Drafting, filing, and service of any motion that is required for entry of a Confirmation Order or is necessary to resolve any objection(s) to confirmation of the Chapter 13 Plan;
9. Timely review all filed proofs of claim;
10. Review and confirm perfection of liens or encumbrances against the Debtor's real property, and provide documentation to the Trustee on request;
11. Representation of the Debtor in connection with any Motion to Avoid Liens and any Motion to Value Secured Claims;
12. Representation of the Debtor in connection with all pre-confirmation (and two (2) post-confirmation) Motions to Dismiss or Convert the case;

13. Representation of the Debtor in connection with objections to claims, but only to the extent that the objection is granted either on default or following resolution of a service-related issue only;
14. Telephone calls and written correspondence with the Debtor, Chapter 13 Trustee, and creditors regarding the case;
15. Representation of the Debtor in connection with any Motion to Deem Mortgage Current;
16. Preparation and filing of certifications required to obtain a discharge after Plan payments are completed; and
17. Attend any discharge hearing scheduled and address any objections to discharge.

The Debtor's Attorney may be relieved of representation of the Debtor only by Order of the Court, after notice and a hearing, or by a substitution of counsel approved by the Court.

**THE PRESUMPTIVELY REASONABLE BASE LEGAL FEE (FLAT-FEE)**

As compensation for providing the Base Legal Services required in Paragraphs 1-17, the Debtor's Attorney will be entitled to payment of the "Base Legal Fee" upon confirmation of the Debtor's Chapter 13 Plan. The Base Legal Fee will be paid by the Trustee to the Debtor's Attorney from Plan payments, unless the Court orders otherwise. *The amount of any retainer fee paid to the attorney by or on behalf of the Debtor must be credited against and deducted from the total Base Legal Fee.* It is expected that the Base Legal Fee will cover all legal services ("cradle-to-grave") that would reasonably be required to obtain confirmation of a Chapter 13 Plan and a Chapter 13 Discharge Order.

***THE PRESUMPTIVELY REASONABLE BASE LEGAL FEE  
IS A FLAT FEE RANGING FROM \$3,750.00 (OR LESS) TO \$6,750.00  
DEPENDING ON THE NATURE AND COMPLEXITY OF THE CASE.***

The specific amount of the Base Legal Fee must be agreed upon by the Debtor and the attorney at the time of retention and must be specified in the Retainer Agreement and Rule 2016(b) Statement. The amount of the Base Legal Fee must be based on the complexity of the

Debtor's particular case.<sup>3</sup> The Base Legal Fee will be deemed to be presumptively reasonable (but not guaranteed) under 11 U.S.C. § 330(a), eliminating the need for the attorney to file a Fee Application or for the Court to hold a hearing. The Chapter 13 Plan and Rule 2016(b) Statement will be treated as the Fee Application required by Rule 2016(a) and the Order Confirming the Plan will be treated as an Order Approving Compensation.

#### **FEES FOR ADDITIONAL LEGAL SERVICES<sup>4</sup>**

The Debtor may require Additional Legal Services (beyond those identified as Base Legal Services) prior to Plan completion and issuance of a discharge order. Debtor's Attorney is required to provide the following Additional Legal Services to Debtor, without exception, but the cost of each Additional Legal Service will result in an Additional Legal Fee. Unless otherwise ordered by the Court, the Additional Legal Fee will be paid to Debtor's Attorney by the Trustee through Debtor's ongoing Plan payments.

#### **ADDITIONAL LEGAL SERVICES**

- A. Any Motion to Modify a Confirmed Plan;
- B. Any Motion to Reconsider Dismissal of Chapter 13 Case;
- C. Any Motion to Approve Debtor Incurring New Debt, following Trustee's denial of Debtor's initial request;
- D. Any Motion to Modify and/or Disallow proof(s) of claim(s), where an objection is interposed and is not based upon service of process;
- E. Defense of any Motion for Relief from the Automatic Stay;

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<sup>3</sup> "Complexity" of the case is determined by identifiable factors, such as whether: the Debtor is engaged in business under § 1304 of the Code, is a consumer debtor, is a W-2 wage earner or is self-employed, has secured debts, owns real property encumbered by a mortgage that is in arrears, owes past due taxes to the IRS or state taxing authorities, requires the automatic stay extended or imposed, or requires liens to be avoided, stripped, or modified.

<sup>4</sup> The "Fees for Additional Legal Services" will be used by the Chapter 13 Trustee as a guideline for cases filed before May 1, 2024, if a Plan has already been confirmed.

- F. Defense of the 3<sup>rd</sup> post-confirmation (and any subsequent) Motion to Dismiss or Convert the case;
- G. Any Motion to Purchase, Sell, or Refinance Real or Personal Property;
- H. Any Motion to Retain Income Tax Refunds, following Trustee's denial of Debtor's initial request;
- I. Any Motion for a Hardship Discharge; and
- J. Any other motion that is not specifically covered by the list of Base Legal Services.

**PAYMENT OF ATTORNEYS' FEES FOR ADDITIONAL LEGAL SERVICES**

The Debtor's Attorney will be entitled to payment of an Additional Legal Fee after providing any of the services listed in Paragraphs A-J.

***THE PRESUMPTIVELY REASONABLE ADDITIONAL LEGAL FEE FOR EACH TASK IS A FLAT FEE RANGING FROM \$350.00 TO \$750.00 DEPENDING ON THE NATURE AND COMPLEXITY OF THE LEGAL SERVICES RENDERED.<sup>5</sup>***

The Debtor's Attorney may include a request for an Additional Legal Services Fee in a motion or responsive pleading. The Order resolving the matter will include both the disposition of the litigated matter and approval of an amount awarded as an Additional Legal Services Fee. The request for attorneys' fees for Additional Legal Services must include: (1) a specific description of the Additional Legal Services rendered or a stipulation with the Chapter 13 Trustee generally describing those services; (2) the Additional Legal Services Fee and costs requested; (3) the Base Legal Fee approved in the Confirmation Order or disclosed in the Rule 2016(b) Statement (if the Plan is not yet confirmed), and any Additional Legal Fee(s) previously awarded; (4) total legal fees paid to the attorney to date; and (5) a statement by the attorney

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<sup>5</sup> NOTE: Alternatively, if the Additional Legal Services involve a novel or complex motion not routinely seen in Chapter 13 practice, the Debtor's Attorney may choose to bill on an hourly fee basis, and file a Supplemental Rule 2016(b) Statement and also file a Fee Application, under 11 U.S.C. § 330, on notice (supported by detailed time records).

certifying whether an award of the Additional Legal Fee will or will not result in the total compensation being paid to the Debtor's Attorney being more than 50% of the amount to be funded through the Debtor's Plan.

Any amount that has been paid to the Attorney as a pre-petition retainer *is not* deducted from the total Additional Legal Fees payable to the attorney. Unless otherwise ordered by the Court, any Additional Attorneys' Fees awarded for Additional Legal Services will be paid by the Trustee from the Debtor's Plan payments. If the award of Additional Legal Fees would render the Plan infeasible, reduce the amount to be paid to unsecured creditors, or reduce the dividend noticed to unsecured creditors, the Debtor's Plan payment must be increased to pay the Additional Legal Fees through the Plan.

Unless ordered by the Court, after a hearing on notice, the total compensation for the Debtor's Attorney (whether computed using the Base Legal Fee/Additional Legal Services Flat-Fee or an Hourly Fee structure) must not be more than 50% of the amount to be funded through the Plan.

### **COSTS**

The Base Legal Fee and Additional Legal Services Fee is inclusive of costs, except for: Clerk's Office filing fees, county recording fees, actual and reasonable fees charged by third-party providers for lien searches, costs of credit-counseling and debtor education courses, and actual and necessary costs of service by regular mail, certified mail, or overnight delivery service.

### **\*\*\*HOURLY FEE STRUCTURE ALTERNATIVE\*\*\***

Alternatively, at the time of retention, the Debtor's Attorney may elect to represent the Debtor on an hourly fee basis throughout the case. If the Attorney is representing the Debtor on

an hourly fee basis (rather than the Base Legal Fee/Additional Legal Servicing Flat-Fee option), no fees will be awarded without the filing of an Application for Compensation, on notice, and supported by detailed time records, under 11 U.S.C. § 330. Additionally, the Retainer Agreement and Rule 2016(b) Statement must specify the amount of the hourly fee that will be charged.

**INVOLUNTARY DISMISSAL OF CHAPTER 13 CASE**  
**—PRESUMPTIVELY REASONABLE DISCOUNT FEE—**

If a Chapter 13 case is dismissed involuntarily before confirmation of the Chapter 13 Plan, the Debtor’s Attorney is allowed a § 503(b) administrative expense claim equal to a *maximum* of 50% of the Base Legal Fee (if the flat-fee option is agreed to by the Debtor and the attorney at the time of retention), less any amount received by the attorney as a retainer.<sup>6</sup> The resulting amount is to be distributed by the Chapter 13 Trustee, under § 1326(a)(2), out of funds (if any) held by the Trustee from pre-confirmation payments made by the Debtor, after deduction of any unpaid Chapter 13 Trustee commissions.<sup>7</sup>

The award of attorneys’ fees under the “Presumptively Reasonable Fee Discount” is **not** guaranteed. The Court may reduce the attorneys’ fees awarded *sua sponte* or in response to an objection by the Chapter 13 Trustee, the United States Trustee, or a party in interest, under 11 U.S.C. § 330, to an amount (if any) that the Court determines to be reasonable and necessary.<sup>8</sup>

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<sup>6</sup> If the Debtor’s Attorney elected to bill on an hourly fee basis, an Application for Compensation, on notice, supported by detailed time records is required.

<sup>7</sup> See *In re Lovell*, Case No. 23-20151, 2024 Bankr. LEXIS 553 (Bankr. W.D.N.Y. Mar. 6, 2024) (Warren, J.).

<sup>8</sup> See *In re Stevens*, Case No. 22-20579, 2024 Bankr. LEXIS 542 (Bankr. W.D.N.Y. Mar. 6, 2024) (Warren, J.). The policy changes adopted by the Court in *In re Stevens* were effective immediately and apply to any Chapter 13 case pending before this Court. *Id.* at \*5.

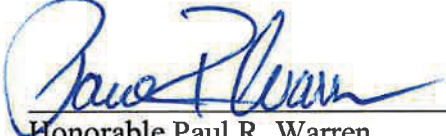
**CONCLUSION**

The dollar amounts specified in this Administrative Order will be reviewed by the Court every 2 years to determine whether any adjustment (upward or downward) is appropriate.

This Administrative Order will be in effect for Chapter 13 cases assigned to Judge Warren, filed on or after May 1, 2024.

**SO ORDERED.**

DATED: April 1, 2024

  
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Honorable Paul R. Warren  
United States Bankruptcy Judge