

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Debtor's Attorney Fees in
Chapter 13 Cases

Administrative Order FTM-2010-1

AMENDED
ADMINISTRATIVE ORDER ESTABLISHING PRESUMPTIVELY
DEBTOR'S ATTORNEY FEE IN CHAPTER 13 CASE

This order sets forth the procedures that will generally be followed by this Court with respect to the attorneys' fees to be routinely allowed without a fee application and support time records for attorneys representing Chapter 13 debtors in cases filed in the United States Bankruptcy Court for the Middle District of Florida, Fort Myers Division.

On August 31, 2007, the Court entered an Order Establishing Presumptively Reasonable Debtor's Attorney Fee in Chapter 13 Cases, Misc. Pro. 07-mp-0002-MGW. In the Order, the Court recognized that the Tampa Division Judges had generally followed the procedures set forth in *In re Newman*, 2003 WL 751327 (Bankr. M.D. Fla.) to establish a presumptively reasonable fee for the debtor's counsel in a Chapter 13 case (the Newman Procedures). The Court also recognized, however, that the *Newman* Procedures were due to be modified in order to account for the requirements of BAPCPA and the passage of time. Consequently, after soliciting comments from attorneys who regularly represent Chapter 13 debtors, and following a full-day evidentiary hearing, the Court found that it was appropriate to modify the *Newman* Procedures as set forth in the Order.

This Court expressly adopts and incorporates the findings contained in the Order entered on August 31, 2007, and the *Newman* Procedures and rationale shall continue to apply to Chapter 13 cases filed before this Court. For purposes of the Fort Myers Division, however, the

terms and conditions under which attorneys representing Chapter 13 debtors are allowed a presumptively reasonable fee shall be modified as set forth in this Order.

Therefore, it is

Ordered as follows:

1. The Presumptively Reasonable Fee for cases filed after the entry of this order is \$3,000.00, regardless of the length of the Chapter 13 Plan.
2. The attorney for the Debtor may be compensated as an administrative expense to be paid under the terms of the confirmed plan, these items, referred to as a la carte items, for which a fee of \$250.00 if no hearing is required or \$350.00 if a hearing is held will be allowed as an addition to the Presumptively Reasonable Fee:
 - a. Motions for reconsideration of an order dismissing case;
 - b. Motions to amend or modify plan;
 - c. Motions for approval of sale or refinancing
 - d. Motions to approve settlements of any causes of actions, such as, for example, personal injury or a worker's compensation claim;
 - e. Motions to approve early termination of Chapter 13 plan;
 - f. Motions to impose the stay pursuant to §362(c) (4); Motions to determine secured status of homestead mortgage and to strip lien(provided, however, that if two or more motions to determine secured status are set for hearing together, only one will merit a \$350.00 hearing attendance fee, with the remaining motions each meriting only the \$250.00 fee).

The additional fee may be requested in a motion meeting the description of any of the a la carte items. The Court may include in the order on the motion an award of the presumptively reasonable fee for the services in connection with the motion.

3. A fee of \$250.00 will be allowed in addition to the Presumptively Reasonable Fee if non-Florida exemptions apply to the debtor.

4. Other than the a la carte items and the application of non-Florida exemptions, all services rendered by the debtor's attorney and expenses incurred in connection therewith, except

the expenses noted below in this paragraph, from the beginning of the representation through 36 or 60 (whatever the total length of the plan is) months after the date of the order confirming plan shall be fully compensated by the base Presumptively Reasonable Fee. An attorney may collect an additional pre-petition amount for the following expenses: the statutory filing fee and any fee charged by a third-party provider for credit counseling and the education course required by BAPCPA.

5. If an extraordinary matter (“Extraordinary Matter”) arises during the course of the representation of the debtor, then the attorney, conditioned on the debtor’s agreement, may also apply for separate compensation for the Extraordinary Matter based on contemporaneously kept time records and the loadstar method discussed in *In re: Newman*.

6. After the petition is filed, a debtor’s attorney may not request cash or in any way condition providing any services to the debtor on a cash payment for any post-petition services, including for the a la carte items and any Extraordinary Matter. Payment of the fees for such services shall be limited to the allowance of an administrative expense to be paid by the Chapter 13 trustee pursuant to the order confirming plan or other order of the court.

7. The Presumptively Reasonable Fee and any addition thereto established by this order are to be deemed allowed administrative expenses without application or further order of the Court, and the holder thereof (i.e. the Chapter 13 debtor’s attorney) is thus entitled to a prorated portion of the Trust Funds in the event the case is dismissed or converted prior to confirmation and there is a partial pre-confirmation plan payment.

8. Payments to be made pursuant to the confirmed Chapter 13 plan to unsecured priority and non-priority creditors (other than priority creditors with claims falling within §507(a)(2)) and the commencement of the equal monthly payments to be paid to the holders of

secured claims pursuant to §1325(a)(5)(iii)(I), except for current payments (or adequate protection payments) on real-estate being paid through the Chapter 13 Trustee, shall be deferred and shall not commence until all attorneys fees allowed to the debtor's attorney and entitled to priority under §§507 and 1326(b)(1) shall have been paid in full; provided however, until such time, the holder of a lien on a motor vehicle shall be paid monthly at the rate of 50 percent of the monthly payment provided in the Chapter 13 plan on account of such lie, at the same time that a monthly payment is made toward payment of attorney fees. Current payments (or adequate protection payments) on real-estate being paid through the Chapter 13 Trustee shall not be deferred to pay attorneys fees. To the extent that fees are awarded for the performance of a la carte items performed after commencement of payments to unsecured creditors, such payments shall be suspended when additional fees are awarded and such fees shall be paid in full before payments to unsecured creditors are recommenced.

9. The amounts to be allowed under the terms of this order shall be readjusted utilizing the methodology set forth in §104(b) for cases filed on or after the effective date the adjustment under §104(b).

10. If a Chapter 13 case is dismissed before the debtor's completion of all plan payments, any party in interest may request the Court to examine the fees paid to the attorney for the Chapter 13 debtor and require disgorgement of any portion deemed to be excessive. Further, the dismissal of a Chapter 13 case prior to the completion of the plan is without prejudice to any party in interest to seek any remedy available under applicable non-bankruptcy law. In order to provide the debtor and other parties in interest notice of the right to seek examination of the fees paid, the order dismissing the case shall include a provision informing them of that right.

Effect of Presumptively Reasonable Fee

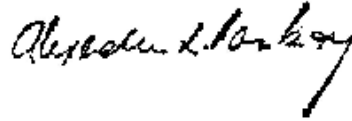
11. Establishment of the Presumptively Reasonable Fee and the additions noted above does not inalterably “fix” the reasonableness of the fee a Chapter 13 debtor’s lawyer may charge. The use of a Presumptively Reasonable Fee merely obviates the need for an attorney, in most cases, to keep contemporaneous time records, file a fee application, and attend a hearing on the fee application when requesting the Presumptively Reasonable Fee. However, the use of the Presumptively Reasonable Fee does not deny the debtor, the Chapter 13 Trustee, or any other party in interest to the right to object to the Presumptively Reasonable Fee in a particular case. In such a case, the objecting party will have the burden of rebutting the reasonableness of the Presumptively Reasonable Fee. In other words, an attorney who attempts to realize the benefits of the Presumptively Reasonable Fee does so at his or her peril if someone objects, as the attorney may not have kept supporting, contemporaneous time records. Consistent with the directive of Newman, the Court reaffirms that in order to provide the debtor and other parties in interest notice of the right to object to the Presumptively Reasonable Fee, the order confirming the Chapter 13 plan shall contain a provision awarding the Presumptively Reasonable Fee and providing fourteen (14) days for the filing of an objection to the award. Absent objection, the Presumptively Reasonable Fee shall be paid in the manner described herein.

12. It is the hope and expectation of the Court that the post-confirmation payment priority accorded herein to the attorney fee for the Chapter 13 debtor’s attorney will encourage attorneys to accept cases in which the debtor cannot afford a substantial prepetition retainer. If the Court’s expectation is realized, the payment priority should result in increased access to the Court by those who cannot afford the relatively expensive upfront cost of filing a Chapter 13 case.

13. This Court’s establishment of a Presumptively Reasonable Fee does not mean that

the Chapter 13 debtor's attorney cannot agree to represent debtors for a lower fee. The Court urges attorneys to do so in appropriate cases when circumstances suggest that the result will be a less substantial expenditure of the attorney's time.

DONE and ORDERED in Chambers on April 9, 2010.

A handwritten signature in black ink, appearing to read "Alexander L. Paskay", written over a horizontal line.

Alexander L. Paskay
United States Bankruptcy Judge

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