

PRESUMPTIVELY REASONABLE (“NO-LOOK”) FEES IN CHAPTER 13 CASES

Presumptively reasonable fee amount through plan confirmation. For Chapter 13 cases filed on or after November 1, 2017, the presumptively reasonable fee for an attorney representing the debtor in connection with a chapter 13 bankruptcy case, through at least plan confirmation, is **\$4,500** (including costs, but not including the Chapter 13 filing fee). If the debtor moves to participate in the Court’s mortgage modification mediation program, the presumptively reasonable fee is **\$5,000**.

Services the Court expects debtor’s counsel to provide in exchange for the presumptively reasonable fee. Generally, the presumed reasonable fee will compensate the debtor’s attorney fairly for all ordinary, necessary and reasonably foreseeable pre-confirmation services and routine post-confirmation services. The services covered by this fee include, without limitation:

1. Preparation and amendment of the petition, schedules, statement of financial affairs, means test forms and Chapter 13 plan.
2. Attendance at the meeting of creditors, including adjournments, unless the trustee excuses counsel’s attendance.
3. Preparation of motions to continue or extend the automatic stay, including appearing at hearings scheduled on those motions.
4. Addressing objections to confirmation and modifying the plan to conform it to claims filed, objections or other requirements of the Code. Serving all amended and modified plans on all creditors.
5. Appearing at all hearings in the bankruptcy case through confirmation of the plan, including all confirmation hearings, whether preliminary or evidentiary.
6. Addressing motions for relief from stay; appearing at hearings as scheduled; and resolving contested stay relief motions as appropriate.
7. Reviewing and objecting to claims.
8. Assisting the debtor with filing the certificate of completion of the financial management course and the certifications for obtaining discharge or otherwise completing the case.

Applying for approval of fees in excess of the presumptively reasonable fee. Some Chapter 13 cases may reasonably require significantly more work than the presumptively reasonable fee contemplates—an unusually complex case may require services in excess of \$4,500; successfully confirming the plan and negotiating a mortgage modification may require services in excess of \$5,000. Counsel seeking approval of fees that exceed the presumptively reasonable fee must file and serve an itemized fee application in accordance with Local Rule 2016. Counsel must include in the fee application all fees for which counsel seeks approval.

Pre-confirmation presumptively reasonable fee: overview. If the Court dismisses a chapter 13 case before plan confirmation, the presumed reasonable fee, which may be allowed without filing a fee application, is \$1,000. The Chapter 13 trustee may deduct up to this amount as an allowed administrative expense under §503(b) payable to debtor’s counsel before returning any funds to the debtor under §1326(a)(2). Debtor’s counsel must follow the procedures described in this fee appendix to obtain payment of the presumed reasonable fees from funds held by the trustee upon dismissal.

What is included in the pre-confirmation presumptively reasonable fee and how the trustee determines the amount payable to counsel. The presumed reasonable fee includes any pre-petition fees (but not costs, such as the filing fee) paid by the debtor to counsel. As provided in §1326(a)(2), the trustee may only deduct the unpaid portion of the presumed reasonable fee before returning payments to the debtor upon dismissal. The trustee may rely on the Form B2030 filed by debtor's counsel to determine the amount of the pre-petition payment regardless of other circumstances. If there is a reasonable basis for questioning the accuracy of the Form B2030's report of paid fees, the trustee may alternatively request that the Court determine the amount of the unpaid presumed reasonable fee.

Procedure for allowing the pre-confirmation presumptively reasonable fee when the trustee moves to dismiss. When the trustee moves to dismiss a chapter 13 case of a debtor represented by counsel, the trustee must serve the debtor with notice via first class mail that (1) the trustee intends to deduct the unpaid presumed reasonable fee before returning funds to the debtor; and (2) if the debtor contests payment of the presumed reasonable fee to counsel, the debtor must file an objection to that payment by the deadline for objecting to the motion to dismiss. If the debtor does not file an objection by the deadline for objecting to the motion to dismiss, the dismissal order will authorize the trustee to disburse the unpaid presumed reasonable fee to counsel.

Procedure for seeking approval of more than \$1,000 for pre-confirmation fees when trustee moves to dismiss. If debtor's counsel seeks allowance of pre-confirmation fees in excess of \$1,000 (including fees paid before filing the petition), counsel must file a fee application before the deadline to object to dismissal expires. Counsel's filing of a fee application under Local Rule 2016 supersedes the presumed reasonable fee procedure, and counsel must include in the fee application all fees for which counsel seeks approval. The Court will not allow fees in excess of the presumed reasonable fee unless counsel files a fee application under Local Rule 2016.

Procedure for seeking fee allowance when the debtor moves to dismiss before confirmation. If the debtor moves to dismiss before confirmation, debtor's counsel must simultaneously either seek allowance of the presumed reasonable fee or file a notice of intent to file a fee application under Local Rule 2016. To seek allowance of the presumed reasonable fee, debtor's counsel must file and serve the debtor with notice via first class mail that (1) the trustee will deduct the unpaid presumed reasonable fee before returning funds to the debtor; and (2) if the debtor contests payment of the presumed reasonable fee to counsel, the debtor must file an objection to that payment within 14 days of service of the notice. If counsel files notice of intent to file a fee application, counsel must file and serve the fee application within 14 days of filing the motion to dismiss and the accompanying notice of intent to file a fee application.

When a debtor moves to dismiss, the Court may dismiss the case before the time to object to counsel's request to approve administrative expenses expires. When counsel timely moves to allow payment of administrative expenses, the trustee will hold all funds until the Court adjudicates payment of the administrative expense. If the debtor does not file a timely objection, debtor's counsel must file a proposed order authorizing payment of the unpaid-pre-confirmation-presumptively-reasonable fee within 14 days of the expiration of the objection period. If debtor's counsel does not timely submit a proposed order, the Court may issue an order disallowing the administrative expense and authorizing the trustee to disburse the funds to the debtor.

Trustee's payment of the presumptively reasonable fee when there are other allowed administrative expenses. If there are other unpaid, allowed administrative expenses under 11 U.S.C. § 503(b), the trustee must pay these expenses along with the balance of the fee award on a pro rata basis from plan payments in the trustee's possession.

Presumptively reasonable fee for post-confirmation plan modification: amount and procedure. The presumed reasonable fee for preparing and filing a post-confirmation modification of the debtor's plan is \$300. The proposed modification must expressly provide for this fee, and the Court order confirming the modified plan will authorize the trustee or debtor to pay this fee.

Presumptively reasonable fee and adversary proceedings. The Court does not expect that the presumptively reasonable fee includes services rendered in connection with adversary proceedings. Counsel may elect to represent the debtor in adversary proceedings without compensation in excess of the presumptively reasonable amount; under those circumstances, counsel is not required to file a fee application. If counsel seeks approval of fees in excess of the presumptively reasonable fee, including for services performed in connection with an adversary proceeding, counsel must file a fee application under Local Rule 2016. The fee application supersedes the presumed reasonable fee procedure, and counsel must include in the fee application all fees for which counsel seeks approval.

The Court may adjudicate whether the fee is actually reasonable even when counsel seeks only a presumptively reasonable fee. The presumptively reasonable fees described above are just that – presumptions. Where the fee does not exceed the applicable presumptively reasonable amount and no party objects to the fee, the Court typically will not require counsel to file an application for compensation. Nothing precludes the trustee, creditors or the Court itself, however, from disputing the actual reasonableness of an attorney's fees in any particular case.

If a party in interest objects to payment of the presumptively reasonable fee or asks the Court to determine whether the attorney's services justify payment of that fee, the attorney requesting the fee must submit an application for compensation in accordance with the requirements of Local Rule 2016. The Court may schedule a hearing to adjudicate the fee's reasonableness. The attorney requesting the fee bears the burden of proving that the fee is actually reasonable.