

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
United States Courthouse  
1130 "O" Street, Room 2656  
Fresno, California 93721

**BRETT DORIAN**, Judge

Telephone: (209) 498-7390

MEMORANDUM

To : Chapter 13 Practitioners

From: Brett Dorian

Date: October 17, 1995

Re : Revised Fee Schedule

Enclosed is a copy of a revised schedule of fees-which I will allow Chapter 13 debtors' attorneys without submission of time records. These fees may be utilized as to any new clients, and, where applicable, to pending cases.' Two replies were received when the proposed fee schedule was distributed for comment last July. Because the views expressed in those comments may be shared by other attorneys, I will respond to some of them below.

Where a fee agreement has already been reached with a client which might result in a higher initial flat fee than what might be allowed under the revised schedule, the old fee will be approved, but services which were to be provided as part of the initial flat fee under the prior schedule may not be separately billed under the revised one.

No matter how complex the initial contested 362 action may be, it will be deemed fully included in the initial fee. If there is some concern in a particular case that the first 362 action will involve an inordinate amount of work, the attorney should consider taking the entire case on an hourly basis.

The limitations imposed on what will constitute a business case are based on the court's experience that a business operated out of the home or which does not produce a major portion of the debtor's income, is more akin to a consumer than a business bankruptcy --that the mere designation of "self-employed" does not give rise to the types of debt problems that businesses

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'Where a previously approved flat fee in a pending case under the prior fee schedule has not included a service from the a **la** carte menu, the revised fee schedule may be utilized.

generally have. Again, if a non-qualifying "business" 13 appears likely to entail substantial litigation, the attorney has the option of undertaking representation on an hourly fee basis. In reality, it would seem that any attorney who undertakes representation of a true business debtor for a flat fee should carefully analyze the wisdom of doing so.

If it is known at the time of filing that an a la carte service will be completed prior to the signing of the confirmation order, the separate fee may be included in the initial application. As the trustee performs the fee-noticing function for fees to be approved at the confirmation hearing, it will be the attorney's responsibility to insure that the trustee understands what fees are being sought in connection with that hearing. Fee requests not included in the initial application which the trustee notices must be noticed or presented ex parte in accordance with FRBP 2002(a)(7).

Opposition was expressed to the court's view that a debtor's attorney should be obligated to undertake all litigation that becomes necessary during the course of a Chapter 13 case. An attorney's legal responsibility to the client under state law is of course initially controlling in this area. Beyond that is the fact that the attorney's initial assumption of representation makes the willingness of a different attorney to step in highly unlikely, especially when all the debtor's income is property of the estate. The standard is possibly foreseeability--experience shows that a debtor with a real property arrearage will probably be faced with multiple hearings on relief from stay matters and debtors paying off cars will often fail to maintain insurance. I would generally not expect attorneys to be obligated to handle post-filing family law matters which did not affect the Chapter 13 case or provide assistance in other non-bankruptcy matters. But debtors do require plan modifications, suspensions and a variety of services involving property and the attorney should be prepared to deal with these matters with the view toward payment under the plan. If compelling reasons exist, appropriate relief, if justified, can be sought from the court.

Other comments mainly addressed concern over the possible inadequacy of the scheduled fees. Such concerns ignore the fact that use of the fee schedule is totally optional and that any attorney in any case is free to utilize hourly fees and seek approval as in any-other case. The schedule attempts to establish fees which on average will provide adequate compensation in those cases where the need for services is deemed by the attorney as likely to fall only somewhat above or somewhat below what the set fees provide. The schedule simply cannot peg fees to the inefficient attorney and the irresponsible client or to the case where the need for services far exceeds the perceived norm.

No attorney is forced to undertake representation of a Chapter 13 debtor. Any attorney who does so needs to understand that in the vast majority of cases the ability of a Chapter 13 debtor to pay

attorney fees is severely limited. Excessive attorney fees will in most cases doom completion of the plan.

Given the relatively low percentage of filed plans that get confirmed and the relatively high percentage of confirmed plans that do not get completed,<sup>2</sup> every attorney who considers taking on a Chapter 13 client needs to ask: 1. Does this debtor have a realistic chance of getting this plan confirmed? and 2. Does this debtor have a realistic chance of completing the plan if confirmed. Many of you, it seems, are raging optimists when face with these questions. If you ignore history, are you not doomed to repeat it?

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<sup>2</sup>This is my personal view based on anecdotal observations.

GUIDELINES FOR CHAPTER 13 ATTORNEY FEES  
Eastern District of California, Fresno Division  
Revision 1 -- October 20, 1995

As a wholly optional alternative to requesting fees based on time records, the following amounts, less any fees received pre-filing, may be requested without submission of time records as a "flat" fee, provided, however, that the fee application must set forth as the full amount of fees to be approved all amounts paid pre-petition:

**BASE FEE:** Includes all services required through plan confirmation, including amendments to schedules or the plan and any required service of documents related to such amendments, as well as services related to one 362 motion in which a response is served and filed and generally all 362 motions in which a response is not filed.

Applications requesting initial flat fees should make reference to the letter and/or number designation set forth below to identify the type of case for which fees are being sought.

- A. Plan, no real estate arrearage . . . . . \$1,200
- B. Plan providing for real estate arrearage . . . . \$1,450
- C. Business debtor, no real estate arrearage . . . \$1,700
- D. Business debtor, with real estate arrearage . . . \$1,950

Under these guidelines, a business debtor is deemed to be a debtor who operates a business from a location other than the debtor's residence and who receives the majority of the debtor's (or family's) net income from the operation of the business.

**ADDITIONS TO THE BASE FEE WHICH CAN BE INCLUDED AS PART OF THE INITIAL "FLAT" FEE REQUEST OR CAN BE RE-REQUESTED WITHOUT SUBMISSION OF TIME RECORDS AT A LATER TIME:**

- 1. First 522(f) motion re personal property . . . . . \$100
- 2. Additional 522(f) motions re personal property (each) . . \$75
- 3. First 522(f) motion re real property . . . . . \$150
- 4. Second and subsequent 522(f) motions re real property . \$120

**THE FOLLOWING FEES MAY BE REQUESTED AFTER THE INITIAL FEE REQUEST ACCORDING TO THE FOLLOWING FLAT FEE SCHEDULE OR AT AN HOURLY RATE UPON SUBMISSION OF TIME RECORDS:**

- 5. Unopposed objection to claim not requiring a declaration . . . . . \$100
- 6. Unopposed objection to claim requiring a declaration .. \$150
- 7. Motion to defer plan payment and/or motion to modify plan . . . . . \$175
- 8. Motion to sell personal property , . . . . . \$150
- 9. Motion to sell real property . . . . . \$200
- 10. Opposition by way of filed response and declaration to 362 motion not included in initial fee ..... \$250
- 11. Opposition without filed response and declaration to 362 motion . . . . . \$75
- 12. Appearance on trustee's motion to dismiss . . . . \$25

13. Miscellaneous services requiring filed documents  
not described above . . . . . \$100

The above amounts are the maximum amounts which will be allowed on a set fee basis. The court retains the right to reduce fees where deemed appropriate, as, for example where services performed do not benefit the debtor or services were required because of attorney error, inadvertence, inexperience or incompetence.

As an alternative to any flat fee, an attorney may request fees based solely on time records and an hourly rate. Any fee request based on time records must contain detailed information as to the specific service performed. Lumping of services is not permitted. The normal rules of notice and hearing apply to applications based on time records. The trustee will notice fees requested at the time the petition is filed; any subsequent or revised fee requests must be set for hearing on appropriate notice served by the attorney if FRBP 2002(a)(7) so requires. Applications based on hourly rates must include a declaration by the attorney verifying the accuracy of the description of services performed and the time charged. The use of the flat fee schedule is wholly optional.

Because it is deemed that services which are not included in the flat fee schedule are subject to such variation in the time required to perform such services, such fees must be sought with time record support.

All attorneys are expected to maintain time records. Absent such records an attorney cannot ethically or otherwise request approval of fees on a hourly basis. Applications for fees not included *on* the flat fee schedule which are not supported by time records will be approved for no more than, and possibly less than, the \$100 miscellaneous fee.

The debtor's attorney is expected to provide all services required by the debtor throughout the of the case, including the filing of or defense of adversary proceedings as reasonably necessary, whether the debtor is able to pay or commit to the payment of fees which will be incurred.

The attorney's anticipated source of payment should be the disbursements made by the Chapter 13 trustee. In the event it appears unlikely that payments can be expected from that source, the attorney may seek permission to withdraw; but pending or absent such consent, or if withdrawal is denied, the attorney must fully perform required services. In any event, an attorney who assumes the representation of a Chapter 13 debtor must be prepared to furnish all-services required by the debtor in connection with the bankruptcy proceeding for the entire duration of the case Without positive assurance that full compensation will be received.

If a client is to pay an attorney directly for a post-petition service, the client may make that payment at any time, but such payments constitute property of the estate and must remain in the attorney trust account until payment to the attorney has been authorized by the court.'

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'This provision was not in the proposed guidelines circulated previously.