Rules of

Practice and Procedure

of the

United States Bankruptcy Court

for the

Western District of North Carolina

Revised effective September 1, 2021

20

Local Rule 2016-2
Compensation of Chapter 13 Attorneys

(a) **Definitions.**

(1) "Debtor" is the Chapter 13 debtor.

(2) "Real Property Creditor" is the entity holding an allowed secured claim, by virtue of a mortgage, note, deed of trust, or other consensual lien on the real property that is the principal residence of the Debtor, that is to be provided for in the Debtor's Chapter 13 plan pursuant to 11 U.S.C. § 1322(b)(5).

(3) "Fixed Fee" is the amount of the flat non-hourly fee agreed to by the Real Property Creditor and an attorney admitted to practice law before this court who is providing professional services.

(b) **Chapter 13 Plan and Disclosure of Attorney's Fee Procedure.** In addition to the required Official Bankruptcy Forms (the petition, schedules, statements, and other documents), the Debtor shall complete and file Local Form 3 (Chapter 13 attorney fee disclosure), Local Form 4 (Chapter 13 plan), and Local Form 13 ("Authorization to Release Information to the Chapter 13 Trustee Regarding Mortgage Claim Being Paid by the Trustee").

(c) **Compensation of Attorneys in Chapter 13 Cases.**

(1) Subject to paragraph (d)(4) below, the amount of the attorney's fee in cases and with respect to pleadings filed electronically shall be as follows:

(A) The maximum presumptive base fee in a Chapter 13 case is $5,000, and no base fee shall exceed $5,000 unless the court orders otherwise; and

(B) Any fee for non-base services that may be rendered to a Debtor must be applied for and approved by the court. For fees and expenses totaling less than $1,000, notice need only be sent to the Debtor, the Chapter 13 trustee, and the Bankruptcy Administrator. For fees and expenses totaling $1,000 or more, all parties in interest must be noticed.

(2) When a Debtor retains substitute legal counsel, such substituted counsel is entitled to a presumptive non-base fee of up to $500 without formal application to the court, provided that the order allowing

substitute counsel specifies both the amount of the fee and whether the fee is to be paid directly by the Debtor or through the plan.

(A) The substitution of counsel fee shall cover the following services:

(i) Review of the Debtor's filed schedules, statements, and other documents;

(ii) Review of the docket and all documents shown thereon; and

(iii) Consultation with the Debtor respecting next actions to be taken and services to be rendered by substituted counsel and whether such services are covered by the base fee or are subject to non-base fees.

(B) To the extent that substituted counsel must reasonably perform base fee services for the Debtor, such counsel shall file a motion within 30 days of entering the case setting forth the base fee services to be rendered and may apply for payment of an appropriate portion of the base fee for such services.

(d) **Base and Non-base Fee Services.**

(1) The base fee shall be presumed to compensate the Debtor's attorney for a level of services to the Debtor that shall, at a minimum, include the following services:

(A) Providing the pre-filing notices required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

(B) Preparing and filing the required Official Bankruptcy Forms (the petition, schedules, statements, and other documents); supplemental local forms including the Chapter 13 plan and any amended Chapter 13 plan(s); and the matrix of creditors;

(C) Circulating a copy of the Chapter 13 plan and any plan amendments to all creditors and interested parties as reflected in the case matrix;

(D) Drafting and mailing letters to the Debtor regarding attendance at the § 341 meeting of creditors, escrow of first money, and other responsibilities of the Debtor;

(E) Preparing for and attending the § 341 meeting of creditors;

(F) Reviewing the confirmation order and reviewing the status of the case periodically;

(G) Reviewing the Chapter 13 trustee's motion for determination of status of claims;

(H) Maintaining custody and control of all case files with original documents for such periods as required by law or local rule;

(I) Serving orders related to the Debtor's motions and objections on all affected parties;

(J) Verifying the Debtor's identity and Social Security number and furnishing the Debtor's identification card(s), tax returns, and payment advices to the Chapter 13 trustee, if required;

(K) Defending objection(s) to confirmation of the Debtor's plan; and

(L) Preparing and filing Local Form 8 ("Chapter 13 Debtor's Motion for Entry of Discharge") or Local Form 8HD ("Chapter 13 Debtor's Certifications in Support of Motion for Hardship Discharge").

(2) The base fee shall also include the following services to the extent they are requested or reasonably necessary for effective representation of the Debtor:

(A) Preparing and filing proofs of claim on behalf of the Debtor for payment to a creditor;

(B) Objecting to scheduled and unscheduled proofs of claim;

(C) Assuming and rejecting unexpired leases and executory contracts;

(D) Preparing for and attending valuation hearings;

(E) Defending motions to transfer venue;

(F) Conferring with the Debtor regarding obtaining post-petition credit when no request to the court or the Chapter 13 trustee is ultimately made;

(G) Avoiding liens pursuant to 11 U.S.C. § 522(f);

(H) Calculating plan payment modifications when no motion is ultimately filed;

(I) Responding to creditor contacts regarding plan terms, valuation of collateral, claim amounts, etc.;

(J) Responding to communications from the Debtor regarding job losses, changes in financial circumstances, and address changes and advising the court and the Chapter 13 trustee of the same when appropriate;

(K) Communicating with the Debtor, to a reasonable degree, regarding mortgage payment defaults, lease defaults, insurance coverage or the lack thereof, warranties, possible credit disability, life insurance coverage, etc.;

(L) Upon request of the Chapter 13 trustee, obtaining and providing copies of documents relating to lien perfection issues, such as recorded deeds of trust, purchase money security agreements, etc.;

(M) Drafting and mailing letters to creditors upon entry of discharge regarding lien releases, turnover of clear title certificates, cancellation of deeds of trust and judgments, etc.;

(N) Drafting and mailing certified letters to creditors regarding matters related to alleged violations of the automatic stay;

(O) Drafting and mailing letters regarding voluntary turnover of property;

(P) Reviewing documents in relation to the use or sale of collateral when no application is ultimately filed;

(Q) Providing the Debtor with a list of answers to frequently asked questions and other routine communications with the Debtor during the pendency of the case; and

(R) Requesting plan payoffs from the Chapter 13 trustee.

(3) The following services are presumed not to be covered by the base fee, and the court may award additional compensation for the following

services. Non-base fees may not be requested of the Debtor or paid by the Debtor or any other person, in trust or otherwise, without prior approval of the court:

(A) Abandonment of property post-confirmation;

(B) Motions for moratorium;

(C) Motions for authority to sell property;

(D) Motions to modify plan;

(E) Motions to use cash collateral or to incur debt;

(F) Defense of motions for relief from stay and/or co-debtor stay;

(G) Defense of motions to dismiss filed after confirmation of the Debtor's plan;

(H) Stay violation litigation, including amounts paid as fees by the creditor or other parties;

(I) Discharge injunction actions;

(J) Adversary proceedings;

(K) Motions to turnover property;

(L) Conversions to Chapter 7;

(M) Motions to substitute collateral;

(N) Submission of a Request for Credit Authorization form to the Chapter 13 trustee; and

(O) Any other matter not covered by paragraphs (d)(1) and (2) above.

(4) In the court's discretion, attorneys in a Chapter 13 case may request, in open court and without any further notice, non-base fees for the services listed in Part 2 of Appendix D in the amounts set forth therein. Without other notice, the Debtor's attorney may also request the actual expenses of filing fees and of notice to creditors.

(e) **Fees Exceeding the Presumptive and Non-base Fees.**

(1) If any advance fee deposit and/or agreement for payment is taken by an attorney for a Chapter 13 Debtor in an amount that is in excess of the presumptive base fee, within 30 days after the petition is filed, the attorney shall file an application for approval of the fee and notice the same for hearing.

(2) These standard base and non-base fees are intended as a convention to reduce expense to the parties. Counsel may, alternatively, apply for non-base fees on a time and expenses basis in accordance with this local rule and 11 U.S.C. § 330. In cases where the Debtor and counsel elect this procedure, the election must be made within 30 days after the petition is filed, with notice and a hearing.

(f) **Disclosure of Fee.** Every Debtor's attorney must disclose to the Debtor the procedures applicable to awards of attorney's fees in Chapter 13 cases in this district. This disclosure shall be made by reviewing Local Form 3 (Chapter 13 attorney fee disclosure) with the Debtor. Local Form 3 must be fully completed, executed as indicated, and filed with the Chapter 13 petition of the Debtor. In addition, executed copies of Local Form 3 must be maintained by the attorney for a period of four years after the closing of the case, and upon request of the court, the filer must provide executed documents for review.

(g) **Payment of Attorney's Fees in Chapter 13 Cases.**

(1) An attorney may accept an amount of compensation in advance of the filing of the Chapter 13 case up to the maximum $5,000 presumptive base fee on the following conditions:

(A) All court filing fees must be paid in full at the time the case is filed (no installment fees to be applied for); and

(B) The Debtor must appear at the time first set for the § 341 meeting of creditors having tendered to the Chapter 13 trustee no less than all plan payments due.

(2) The Chapter 13 trustee is authorized to make a lump sum disbursement in the first regular, post-confirmation plan disbursement toward payment of the Debtor attorney's base fee balance to the extent that the trustee is then holding plan payments that are not required to be used for adequate protection payments, payment of the Chapter 13

trustee's administrative fee, or any contractual mortgage payments due at that time under the terms of the plan.

(3) To the extent that a balance remains owing on the Debtor attorney's base fee after the application of all payments as set forth in paragraphs (1) and (2) above, the Chapter 13 trustee shall make monthly disbursements on account of such fee balance on a pro rata basis, along with the payments made to creditors holding allowed secured claims.

(4) Any non-base fees and expenses awarded by the court shall be paid by the Chapter 13 trustee on a pro rata basis, along with the payments made to creditors holding allowed secured claims.

(h) **Disbursement of Base and Non-base Fees by the Chapter 13 Trustee.**

(1) The Chapter 13 trustee shall pay allowed base fees in a Chapter 13 plan in the name of the individual attorney of record as specified in the Debtor's filed, confirmed plan.

(2) The Chapter 13 trustee shall pay allowed non-base fees to the attorney as specified in the order allowing such non-base fees.

(3) If there is a change in the professional association of a Debtor's attorney during the pendency of a case that will require the Chapter 13 trustee to redirect payment of fees, the affected attorney must file a letter of agreement with the trustee. If the form and execution of the agreement is satisfactory to the trustee, the trustee will redirect payment of fees in accordance with the letter of agreement.

(4) These local rules do not prohibit the Chapter 13 trustee or any attorney or law firm representing the Debtor from applying to the court for an order directing the payment of allowed attorney's fees.

(i) **Procedure for Fixed Fee Allowance of Fees and Costs Incurred by Real Property Creditors.**

(1) In lieu of filing a detailed summary of time and expenses for reasonable fees and expenses arising under the mortgage loan documents and applicable bankruptcy and non-bankruptcy law, the Real Property Creditor may seek court approval for the assessment of fees in the following manner:

(A) For fees and costs incurred pre-petition—by describing the fees and costs in a proof of claim that complies with the Federal Rules of Bankruptcy Procedure;

(B) For attorney's fees and costs incurred reviewing a Chapter 13 plan and filing a proof of claim—by describing the fees and costs in a proof of claim that complies with the Federal Rules of Bankruptcy Procedure;

(C) For fees, expenses, and charges incurred on the Debtor's mortgage account after the petition was filed (other than amounts previously itemized in a notice or ruled on by the court)—by filing an Official Bankruptcy Form B 410S-2 ("Notice of Postpetition Mortgage Fees, Expenses, and Charges");

(D) For fees and costs incurred filing a pleading for which fees and costs are recoverable:

(i) By including a request for the allowance of fees and costs in such pleading; or

(ii) By filing an application for the allowance of fees and costs as allowed under the Bankruptcy Code and Rules for determination after notice and a hearing.

(2) In all matters herein, if the actual Fixed Fee between the parties is less than the maximum allowed amount listed in Part 3 of Appendix D, then the attorney for the Real Property Creditor may only apply for the Fixed Fee pursuant to the contract with the Real Property Creditor.

(3) Any motion or application seeking approval of fees and costs or any claim filed with the Chapter 13 trustee requesting payment of a Fixed Fee shall include an affidavit or affirmation from the attorney of record stating that the attorney is duly admitted to practice law before this court, that the attorney was retained directly by the Real Property Creditor, and that no part of the fee has been shared with and no agreement to share any part of the fee has been entered into with any third party.

(4) No provisions set forth herein or in any administrative order of the court shall be construed to limit the rights of a creditor or other party in interest from filing an application for the allowance of fees and costs which are in excess of those set forth pursuant to this local rule for determination by the court after a notice and a hearing.

(5) The presumed legal fees in Chapter 13 cases for attorneys admitted to practice law before this court representing Real Property Creditors are listed in Part 3 of Appendix D.

(6) All pre-confirmation Fixed Fees for the attorney for the Real Property Creditor or the servicer are subject to a maximum cap of $1,200.00 regardless of the services rendered unless the court orders otherwise. In connection therewith, an objection to an original proof of claim of the Real Property Creditor or the servicer would be deemed a pre-confirmation service.

(7) In all other litigation between the Chapter 13 trustee, the Debtor, and the servicer/owner of the mortgage note or the Real Property Creditor, the decision regarding whether to award any legal fees and expenses will be in the discretion of the court and will be based on the traditional substantive body of law and rules heretofore adopted by the court.

APPENDIX D

Attorney's Fees in Chapter 13 Cases

Part 1: Base Fee for Debtor's Counsel in Chapter 13 Cases

Pursuant to Local Rule 2016-2(c)(1)(A), the maximum presumptive base fee for debtor's counsel in Chapter 13 cases is $5,000.

When a Chapter 13 debtor retains substitute counsel during a Chapter 13 case, the substitute counsel is entitled to a presumptive base fee of $500 pursuant to Local Rule 2016-2(c)(2).

Part 2: Non-base Fees for Debtor's Counsel in Chapter 13 Cases

The following are the maximum presumptive non-base fees for debtor's attorneys in Chapter 13 cases pursuant to Local Rule 2016-2(d)(4):

- Defense of the Chapter 13 trustee's motion to and/or modify	$200
- Motion to modify plan (including motion for moratorium, motion for hardship discharge, motion to approve insurance settlement, and other motions that require plan modification)	$450
- Substitution of collateral	$450
- Prosecution or defense of motion for relief from stay or co-debtor Stay	$450
- Motion for authority to sell property	$450
- Motion to obtain credit	$450
- Permission from the Chapter 13 trustee to obtain credit	$200
- Motion to extend or impose the automatic stay	$350
- Preparation and filing of a conduit mortgage proof of claim (Official Bankruptcy Form B 410) with a copy of the recorded deed of trust (if no proof of claim has been filed by the creditor on/before the claims bar date)	$350
- Objection to the proof of claim of a Real Property Creditor	$450
- Mortgage modification pursuant to the Loan Modification Management (LMM) Program (see Appendix C for the LMM Program Procedures)	Up to $2000
- Assisting the debtor in applying for a mortgage modification and filing a motion to participate in a trial mortgage modification (non-LMM)	$450
- Filing a motion to approve a permanent mortgage modification (non-LMM)	$450
- Filing a motion to declare a mortgage current or paid in full	$450