

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA AND FORT MYERS DIVISIONS**

www.flmb.uscourts.gov

In re:

Debtor's Attorney's Fees in
Chapter 13 Cases

Miscellaneous
Proceeding No. 07-mp-00002-MGW

**AMENDED ORDER ESTABLISHING PRESUMPTIVELY
REASONABLE DEBTOR'S ATTORNEY'S FEES IN CHAPTER 13 CASES**

This amended order sets forth the procedures that generally will be followed by the judges of the Tampa and Fort Myers Divisions of the United States Bankruptcy Court for the Middle District of Florida ("Court") regarding the attorney's fees to be routinely allowed for attorneys representing chapter 13 debtors in cases in the Tampa and Fort Myers Divisions. This amended order replaces and supersedes the *Order Establishing Presumptively Reasonable Debtor's Attorney Fee in Chapter 13 Cases*¹ ("Fee Order") entered on August 31, 2007, the amendments to the Fee Order² that apply in the Tampa Division, and similar orders entered in the Fort Myers Division.

The purpose of this amended order ("Amended Fee Order") is to provide the Court, chapter 13 Trustees, attorneys, and parties with a single, integrated order addressing attorney's fees in chapter 13 cases in both the Tampa and Fort Myers Divisions, as adjusted under 11 U.S.C. § 104(a).³

¹ Doc. No. 31; 374 B.R. 903 (Bankr. M.D. Fla. 2007).

² Doc. Nos. 33, 35, and 37.

³ The fee amounts listed in this Amended Fee Order are effective for cases filed after April 1, 2016, and with respect to the matters listed in paragraphs 2 and 3 of this Amended Fee Order, for motions filed after April 1, 2016.

Procedural Background

Sections 329 and 330 of the Bankruptcy Code, Title 11, United States Code,⁴ permit the Court to determine the reasonable value for services provided by the attorney for the debtor in a chapter 13 case. In this regard, the judges of the Tampa and Fort Myers Divisions have generally followed the procedures (“*Newman* Procedures”) set forth in *In re Newman*⁵ (“*Newman*”). *Newman* establishes a presumptively reasonable fee to be allowed debtor’s counsel and the requirements for the allowance of such fee, without requiring the attorney to file a fee application with supporting time records. However, *Newman* recognizes, and this Amended Fee Order reaffirms, that any attorney may choose not to charge and seek an award of a presumptively reasonable fee and may instead file a traditional fee application, which will be reviewed by the Court using the lodestar approach and the factors set forth in § 330 and in *Johnson v. Georgia Highway Express, Inc.*⁶

The utility of a presumptively reasonable fee, also called a precalculated lodestar amount,⁷ is well described in *In re Cahill*.⁸ A presumptively reasonable fee

. . . address[es] the need for both efficiency and flexibility in handling the large number of Chapter 13 cases that bankruptcy courts . . . review each year This [presumptively reasonable fee] aids bankruptcy courts in disposing of run-of-the-mill Chapter 13 fee applications expeditiously and uniformly, obviating the need for bankruptcy courts to make the same findings of fact regarding reasonable attorney time expenditures and rates in typical cases for each fee application that they review.

. . .

[A presumptively reasonable fee] anticipates that bankruptcy courts evaluating traditional fee applications will continue to analyze and adjust fee applications on a case-by-case basis using the lodestar analysis and flexible *Johnson* factors, ensuring that the lodestar amount in an atypical case will be adjusted to reflect the specifics of

⁴ All statutory references are to the Bankruptcy Code.

⁵ 2003 WL 751327 (Bankr. M.D. Fla. February 18, 2003).

⁶ 488 F.2d 714, 717-19 (5th Cir. 1974).

⁷ Such a fee is also sometimes referred to by courts as a “no-look” fee, but this label does not do justice to the advance scrutiny that the fee is accorded by courts in determining its presumptive reasonableness.

⁸ 428 F.3d 536 (5th Cir. 2005).

that case. This approach strikes the proper balance between the need for efficient disposal of attorneys' fee applications and the need for a flexible approach that provides for adjustment of the lodestar when necessary.⁹

See also *In re Eliapo*¹⁰ (describing the "virtues" of a presumptively reasonable fee); *In re Howell*¹¹ (standardized fee provides simplicity, efficiency, economy, and certainty); cf. *Hensley v. Eckerhart*¹² (noting that "[a] request for attorneys' fees should not result in a second major litigation"). Indeed, many bankruptcy courts throughout the nation have established presumptively reasonable fees.¹³

In 2007, the judges of the Tampa Division commenced a process, described in the Fee Order,¹⁴ that culminated in modified *Newman* procedures. This Amended Fee Order further updates those procedures.

Modified Newman Procedures

The *Newman* Procedures, and the rationale as well as the terms and conditions under which attorneys representing chapter 13 debtors are allowed a presumptively reasonable fee ("Presumptively Reasonable Fee"), shall continue to apply to chapter 13 cases filed before the Court with the following modifications:

1. The Presumptively Reasonable Fee for cases filed on or after April 1, 2016:¹⁵
 - a. For plans of a duration of 36 months or less: \$3,875.00.

⁹ *Id.* at 540-41 (footnotes and citations omitted).

¹⁰ 468 F.3d 592, 598 (9th Cir. 2006).

¹¹ 226 B.R. 279 (Bankr. M.D. Fla. 1998).

¹² 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983).

¹³ See, e.g., cases cited above and in *Newman* and *In re Williams*, 357 B.R. 434, 439 n. 3 (B.A.P. 6th Cir. 2007); *In re Chapter 13 Fee Applications*, 2006 WL 2850115 (Bankr. S.D. Tex. October 3, 2006); *In re Murray*, 348 B.R. 917 (Bankr. M.D. Ga. 2006); *In re Walker*, 319 B.R. 917 (Bankr. S.D. Ga. 2004); *In re Smith*, 306 B.R. 5 (Bankr. M.D. Ala. 2004).

¹⁴ Doc. No. 31.

¹⁵ Under paragraph 9 of the Fee Order, the Presumptively Reasonable Fee is subject to adjustment every three years to reflect the change in the Consumer Price Index for All Urban Consumers. The fees in paragraphs 1 and 2 of this Amended Order reflect the adjustments that were effective on April 1, 2016.

b. For plans of a duration of 60 months: \$4,225.00.

c. For plans of a duration between 36 and 60 months: the *pro rata* portion of \$350.00 ($\$4,225.00 - \$3,875.00$) based on the months in excess of 36 divided by 24, plus \$3,875.00.

For example, for a 48-month plan, the additional fees will be: $(\$350.00 \times (48 - 36))$ divided by 24 or $(\$350.00 \times 12)$ divided by 24 = \$175.00 plus \$3,875.00 for a total fee of \$4,050.00.

d. The Presumptively Reasonable Fee is increased by an additional \$300.00 if non-Florida exemptions apply to the debtor.

2. Other than the items described in paragraphs 3, 5, and 8 below, the attorney shall be fully compensated by the Presumptively Reasonable Fee from the beginning of the representation through the term of the plan.

3. The “soup to nuts” approach to services to be provided as mandated by *Newman* is modified to allow a limited list of “*a la carte*” matters for which an attorney may be compensated as an administrative expense to be paid under the terms of the confirmed plan. These items are limited to the following matters (“*a la carte* items”) for which a fee of \$300.00 if no hearing is required or \$400.00 if a hearing is held will be allowed as an addition to the Presumptively Reasonable Fee:

a. Motions for reconsideration of an order dismissing the case;

b. Motions to amend or modify plan (including motions to abate payments and motions to retain tax refunds) and responses to motions to modify plan filed by the Trustee or a creditor;

c. Motions for approval of sale or refinancing;

d. Motions to approve the settlement of any claim, such as a personal injury or workers’ compensation claim;

e. Motions to approve early termination of chapter 13 plan;

f. Motions to impose the automatic stay under section 362(c)(4); and

g. Motions to determine the secured status of a mortgage on real property for the purpose of stripping off or stripping down the mortgage lien.

4. The amounts to be allowed under paragraphs 1 and 3 shall be readjusted utilizing the methodology set forth in § 104(a) for cases filed on or after the effective date of the adjustment under § 104(a).

5. The debtor's attorney may request additional compensation if the debtor and the debtor's attorney participate in a Mortgage Modification Mediation. The fee awarded for a Mortgage Modification Mediation includes fees for services rendered in connection with motions for an order directing the parties to Mortgage Modification Mediation and motions for approval of temporary or permanent mortgage modifications.

6. An attorney may collect an additional amount from the debtor for the following expenses: any statutory filing fee, any fee for the debtor's most recent credit report, and any fee charged by a third-party provider for credit counseling and the education course required by BAPCPA. In addition, attorneys may seek reimbursement for the actual costs of photocopy and postage expenses incurred in connection with the service of chapter 13 plans, motions, and orders by including a request in any motion for which fees are sought or by separate application.

7. A request for additional fees and reimbursement of expenses may be included in a motion that meets the description of any of the items described in paragraphs 3 and 5 above. The Court may then include an award of the additional fees in the order on the motion.¹⁶

8. If an extraordinary matter ("Extraordinary Matter") arises during the representation of the debtor, then the attorney may also apply for separate compensation for the Extraordinary

¹⁶ See Expense Reimbursement Guidelines posted on the Court's website at www.flmb.uscourts.gov/procedures.

Matter based on contemporaneously kept time records and the lodestar method discussed in *Newman*.

9. After the petition is filed, unless the Court has granted the attorney's motion for withdrawal from the case, the debtor's attorney may not request payment or in any way condition providing postpetition services to the debtor, including for the *a la carte* items and any Extraordinary Matter, on the receipt of payment from the debtor or any third party. Payment of the fees for such additional services shall be limited to the allowance of an administrative expense to be paid by the chapter 13 trustee under the order confirming the plan or other order of the Court.

10. Establishment of the Presumptively Reasonable Fee and the additional fees for items listed in Paragraphs 3 and 5 do not inalterably "fix" the reasonableness of the fees that a chapter 13 debtor's attorney may charge. Using a Presumptively Reasonable Fee merely obviates the need, in most cases, for an attorney to keep contemporaneous time records, file a fee application, and attend a hearing on the fee application. However, the use of the Presumptively Reasonable Fee does not deny the debtor or any other party in interest the right to object to the Presumptively Reasonable Fee in a particular case. In such a case, the objecting party shall 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 and the attorney has not kept supporting, contemporaneous time records.

11. 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 include a provision awarding the Presumptively Reasonable Fee and providing 21 days for the filing of an objection to the award.

12. If a chapter 13 case is dismissed or converted to another chapter 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 excessive. To provide the debtor and other parties in interest notice of the right to seek an examination of the fees paid, the order dismissing or converting the case shall include a provision informing them of that right.

13. This Court's establishment of a Presumptively Reasonable Fee does not mean that a chapter 13 debtor's attorney cannot agree to represent debtors for a lower fee. The Court urges attorneys to do so when circumstances suggest that the result will be a less substantial expenditure of the attorney's time.

Dated: September 02, 2016.


BY THE JUDGES OF THE TAMPA AND FORT MYERS DIVISIONS:



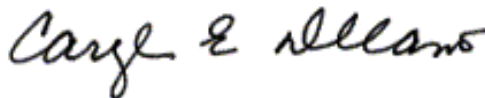
Michael G. Williamson
Chief United States Bankruptcy Judge



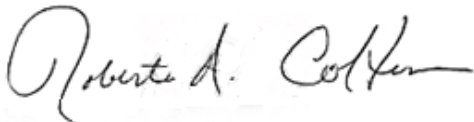
K. Rodney May
United States Bankruptcy Judge



Catherine Peek McEwen
United States Bankruptcy Judge



Caryl E. Delano
United States Bankruptcy Judge



Roberta A. Colton
United States Bankruptcy Judge