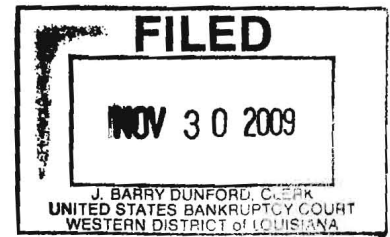


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT and MONROE DIVISIONS



STANDING ORDER REGARDING REIMBURSEMENT
OF FEES OR EXPENSES ADVANCED BY DEBTOR COUNSEL
FROM CHAPTER 13 BANKRUPTCY ESTATE FOR CHAPTER 13
CASES FILED IN THE SHREVEPORT and MONROE DIVISIONS
OF THE WESTERN DISTRICT OF LOUISIANA

LAW

In order to commence a Chapter 13 bankruptcy case a filing fee shall be paid to the clerk of the bankruptcy court. 28 USC §1930(a). That the filing fee for a Chapter 13 bankruptcy case is \$235.00, and in addition thereto the Judicial Conference of the United States has set an administrative fee of \$39 for filing a case under Title 11. 28 USC §1930(a)(1)(B) and 28 USC §1930(b). The present total filing fee for a Chapter 13 bankruptcy petition is, therefore, \$274.00. An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments and the court may fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition, or if extended not later than 180 days after filing the petition. All installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payments to an attorney or any other person who renders services to the debtor in connection with the case. 28 USC §1930(a) and Federal Rules of Bankruptcy Procedure (FRBP) Rule 1006 (b). That the Bankruptcy Court of the Western District of Louisiana has set a schedule for the payment of filing fees of \$274 in a Chapter 13 case and same shall be paid in three (3) installments: first installment of \$94; second installment of \$90; and third installment of \$90. The first installment shall be paid at the commencement of the case. <http://www.lawb.uscourts.gov>.

Any person (debt relief agency) who provides any bankruptcy assistance to any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$164,250 (assisted person) shall provide each assisted person before the commencement of a case under title 11 a Statement of "IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER" and included in that Statement shall be the following disclosure:

"Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. **You will have to pay a filing fee to the bankruptcy court. (emphasis added)** Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee and by creditors."

11 USC §527(a)&(b), 11 USC§342(b)(1) and 11 USC §101(3) & (12A).

An individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency an individual or group briefing that outlines the opportunities for available credit counseling and assisted such individual in performing a related budget analysis. 11 USC §109(h)(1). There is a fee charged for credit counseling.

In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interest of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section. 11 USC §330(a)(4)(B). In determining the amount of reasonable compensation to be awarded to an examiner, trustee, under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including: (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. 11 USC §330(a)(3). Trustees, consumer privacy ombudsman, or a professional person employed under section 327 or 1103 are entitled to reimbursement for actual, necessary expenses. 11 USC §330(a)(1)(B). A Trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once ever 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 off this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement. 11 USC §331.

Compensation and reimbursement awarded under section 330(a) of title 11 are allowed administrative expenses of a bankruptcy estate. 11 USC §503(b)(2). Administrative expenses allowed under section 503(b) of title 11, and any fees and charges assessed against the estate under chapter 123 of title 28 are second or number 2 priority claims against the bankruptcy estate. 11 USC §507(a)(2).

FACTS

In the Shreveport and Monroe Division of the WDLA a practice has been established of Chapter 13 Debtor counsel seeking reimbursement from the bankruptcy estate for credit counseling charges paid by Debtor's counsel on behalf of debtor so that debtor could be eligible for bankruptcy relief. Debtor's counsel has, also, established a practice of seeking reimbursement from the bankruptcy estate for charges paid by Debtor's counsel for credit reports from various credit

reporting agencies to assist counsel in the preparation of the debtor's schedules, statements of affairs and mailing matrixes. These expenses were itemized in the "No Look" Fee Addendum and set forth in the Plan of Repayment as Administrative Expenses that would be approved for payment at confirmation of debtor's Plan of Repayment. These expenses were routinely approved by the court as §503(b)(2) administrative expenses of the bankruptcy estate and given priority status under §507(a)(2).

Recently some practitioners have begun to request reimbursement from the bankruptcy estate of filing fees advanced by debtor's counsel on behalf of debtor so that the case could be commenced. Again, the argument was made that these advanced fees would be administrative expenses entitled to priority status under §503(b)(2) and §507(a)(2). The argument was, also, supplemented with an additional argument that a significant number of cases where debtors requested the right to pay their filing fees in installments were dismissed when debtors would not make the installments and then reinstated when the fees were promptly paid after dismissal as a condition of reinstatement, and this practice consumed a lot of the court's time. The closing argument, often made, was that the debtors were in desperate need of assistance and that counsel was attempting to assist persons in need by advancing the filing fees and that such advances would only be in limited numbers of cases where special circumstances warranted. These arguments were accepted at face value by this court and the practice of reimbursing debtor's counsel advanced filing fees as administrative expenses entitled to priority status was established.

The fact of the matter is that the advancing of credit counseling fees, credit reporting fees and, now, filing fees is NOW all part and parcel of a nationwide advertising campaign where potential chapter 13 debtors are solicited and enticed to file chapter 13 bankruptcy petitions utilizing certain participating lawyers or law firms that advertise "**No Money Down.**" Practitioners utilizing "No Money Down" Chapter 13 bankruptcy filings are advancing the filing fees, credit counseling fees, credit reporting fees, and any other expenses and same are not being paid by the potential debtors. In the "No Money Down" Chapter 13 filings debtor counsel is seeking reimbursement of such advances as administrative priority expenses from the bankruptcy estate to be paid from monthly payments made by the debtor to the Chapter 13 Trustee that are mandated by Chapter 13 of Title 11.

This "No Money Down" practice has created a series of problems for bankruptcy courts and in particular this bankruptcy court. First the idea of "No Money Down" bankruptcy is just misleading; it gives the impression that bankruptcy is easy and that it is like buying furniture with "No Money Down", where the first payment is not due for many months after the sale is consummated. The scenario does not play well in Chapter 13 bankruptcy because the debtor is required to commence payments on the Chapter 13 plan within 30 days of the order of relief (date of filing of petition in most cases). 11 USC §1326(a)(1). The debtor's plan cannot be confirmed unless the payments are being made and are current. 11 USC §1325(a)(6). This court has witnessed an increase in denials of confirmation of debtors' plans of repayment based on failure to pay subsequent to the onslaught to "No Money Down", and especially in the "No Money Down" cases. There is a more serious problem and that is the "No Money Down" advertising campaign that some

practitioners have commenced has caused many persons in need of chapter 13 bankruptcy to gravitate to and seek legal assistance from those practitioners advertising “No Money Down.” The practitioners that utilize the “No Money Down” advertising are usually the larger filers or what is sometimes called “Mega Filers” and because of their size and the volume of cases that they handle they are more financially able to advance the filing fees and pay the costs of carpet advertising. This practice has taken a large number of cases away from the practitioners that file fewer bankruptcy cases per month and are financially unable to advance the filing fees. Those losing the cases to “No Money Down” are the smaller firms or solo practitioners who file five (5) to fifteen (15) bankruptcies per month. These firms are the back bone of the bankruptcy bar in that they usually do quality work and usually maintain good attorney-client relationships and their clients are better informed and fare better in most instances than the clients of the “mega filers”. The end result of “No Money Down” in filings of Chapter 13 bankruptcy is, from this court’s point of view, similar to the end result of “no money down” in the housing market where huge numbers of home buyers were encouraged to purchase homes through sub prime lending practices where they were not required to make a down payment and their payments could escalate because of Adjustable Rate Mortgages or payments set a below debt servicing amounts for the beginning periods of the loan. The Chapter 13 bankruptcy filings are up substantially, the default rate is up, the work product is down, and we have, again, put off until tomorrow that which should be addressed today.

CONCLUSION

This court has come to the conclusion that the advancing of expenses (filing fees, credit counseling fees, credit reporting fees, and any other advances) by Chapter 13 debtor’s counsel pre-filing may not entitle Chapter 13 debtor’s counsel to an administrative expense entitled to priority status and that can be reimbursed by the debtor or bankruptcy estate. The statutes cited above do allow for reimbursement of expenses in certain instances, but this court does not believe those include reimbursement to chapter 13 debtor counsel. There is jurisprudence that indicates that reimbursement of such expenses are allowed to chapter 13 debtor’s counsel, but this court believes that such jurisprudence is misguided and based on chapter filings other than chapter 13 and that reading the statute as written may not allow same. This court has, also, come to the conclusion that should such reimbursement be an allowed administrative priority expense that same must still meet other statutory and jurisprudential requirements which are not presently being met by the utilization of the “No Look” Fee to award fees and the reimbursement of advanced expenses.

The foregoing considered:

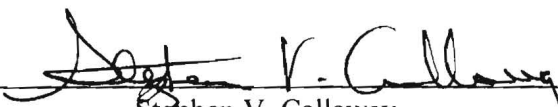
IT IS HEREBY ORDERED that for all Chapter 13 cases filed in the Shreveport and Monroe Divisions of the Western District of Louisiana on or after December 1, 2009, that any request by debtor’s counsel for reimbursement from the bankruptcy estate or the debtor for any sums advanced for filing fees, credit counseling fees, credit reporting fees, or any other fees or expenses advanced shall not be considered for approval by the court if the present “No Look Fee” Fee

Addendum is utilized or after December 14, 2009, if the “No Look Fee with Sliding Scale” Fee Addendum is utilized.

IT IS FURTHER ORDERED that should chapter 13 debtor’s counsel seek reimbursement from the debtor or bankruptcy estate for any fees or expenses advanced as administrative priority expenses that such request must be made in a Formal Application filed post confirmation and noticed for hearings to all creditors, parties in interest and the United States Trustee per 11 USC §330, and Bankruptcy Rules 2002 and 2016. That such formal applications shall meet all statutory guidelines, jurisprudential guidelines, local rule guidelines and guidelines set forth by the United States Trustee, and that same shall be set for mandatory hearings with no “If and Only If” exceptions.

IT IS FURTHER ORDERED that beginning January 1, 2010, the Monroe Chapter 13 cases will be divided between Judge Stephen Callaway and Judge Henley Hunter on an “even - odd” basis. Cases with docket numbers ending in even numbers will be assigned to Judge Callaway, and cases with docket numbers ending in odd numbers will be assigned to Judge Hunter. That the continuation of this prohibition of reimbursing advanced expenses to debtor’s counsel by utilization of the “No Look” Fee Addendum or “No Look Fee with Sliding Scale” Fee Addendum after January 1, 2010, in cases filed in the Monroe Division with docket numbers ending in odd numbers shall be at the option of the presiding judge, Judge Henley A. Hunter.

ORDER READ AND SIGNED in Chambers in Shreveport, Louisiana, on this 28th day of November, 2009.



Stephen V. Callaway
**United States Bankruptcy Court
Western District of Louisiana
Shreveport and Monroe Divisions**