

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

IMPORTANT NOTICE TO THE BAR AND PUBLIC

**THIRTY-DAY COMMENT PERIOD CONCERNING
PROPOSED MODIFICATION OF D.N.J. LBR 2016-5. REQUESTS
AND APPLICATIONS FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES IN A CHAPTER 13 CASE**

Please be advised that the Board of Judges of the United States Bankruptcy Court for the District of New Jersey has approved for publication for a thirty day public comment period, the attached proposed modification of *D.N.J. LBR 2016-5. Requests and Applications for Compensation and Reimbursement of Expenses in a Chapter 13 Case.*

The changes to the Rule have been proposed by the Lawyers Advisory Committee, and preliminarily approved by the Board of Judges. By approving a publication draft, the Board of Judges solicits comments from bankruptcy professionals and members of the public.

Comments may be submitted to the Court email address: local_rules@njb.uscourts.gov

Dated: June 23, 2017

Jeanne A. Naughton, Clerk

D.N.J. LBR 2016-5. Requests and Applications for Compensation and Reimbursement of Expenses in a Chapter 13 Case

(a) Compensation Methods. The debtor's attorney in a chapter 13 case must, at a minimum, provide the services set forth in D.N.J. LBR 2016-5(d) and (e) and for doing so may be compensated as follows:

(1) Subject to D.N.J. LBR 2016-5(h), the debtor's attorney in a chapter 13 case may accept a presumptively reasonable fee as set forth in D.N.J. LBR 2016-5(c);

(2) Alternatively, the debtor's attorney in a chapter 13 case may opt out of the compensation procedures set forth in D.N.J. LBR 2016-5(c) and instead make application for fees and costs in accordance with D.N.J. LBR 2016-1.

(b) Selection of Compensation Method. The chapter 13 debtor's attorney must select the method of compensation for services to be rendered in the case by filing Local Form *Selection of Chapter 13 Compensation Method* within 14 days after the petition is filed. If the debtor's attorney does not timely file Local Form *Selection of Chapter 13 Compensation Method*, the attorney will be compensated under D.N.J. LBR 2016-5(c). The selected compensation method may not be changed during any part of the case.

(c) Presumptively Reasonable Fees for Services in Chapter 13 Cases. Subject to D.N.J. LBR 2016-5(h), a chapter 13 debtor's attorney is not required to file a separate application for allowance of compensation if the total fees and costs, exclusive of the filing fee, charged is:

(1) **\$4,500 or less** in a consumer case; or

(2) **\$5,000 or less** in a case in which the debtor, at the time the petition is filed, is: (a) engaged in business as defined in 11 U.S.C. § 1304(a); or (b) derives more than 20% of the debtor's monthly gross income in a self-employed capacity.

(d) Services Included in Presumptively Reasonable Fee. An attorney who is to be compensated under D.N.J. LBR 2016-5(c) must, for the presumptively reasonable fee, represent the debtor in all matters arising in the case up to the date on which the order confirming the debtor's plan is entered, and those matters, after plan confirmation, necessary to have the debtor's discharge entered and to have the case closed, including but not limited to the following services:

(1) Meet with the debtor to review the debtor's financial situation and discuss the bankruptcy process;

(2) Prepare, file and serve the debtor's petition, plan, schedules, and statement of financial affairs, as well as all necessary amendments;

(3) Provide the chapter 13 trustee with all required documents including payment advices, redacted tax returns, real property valuations, and any other documents requested by the trustee;

(4) Attend the meeting(s) of creditors, confirmation hearing(s), and all other hearings when required including any adjournment thereof;

(5) File motions to avoid pre-petition liens under 11 U.S.C. §522(f) or to reclassify pre-petition liens, petition liens, in whole or in part, under 11 U.S.C. §506(a) based on valuation of collateral, whether included in the plan or whether separately filed;

(6) Review and respond to filed objections to plan confirmation;

(7) Review filed claims and file objections to claims as necessary, object to untimely claims, and modify the plan to conform it to the claims filed, when necessary;

(8) Assist the debtor in petitioning the Court to employ professionals, to seek approval of settlements or compromises and to request approval of compensation for professionals;

(9) Review, and if necessary, oppose motions for stay relief;

(10) Review, and if necessary, oppose motions to dismiss the case;

(11) Represent the debtor in United States Trustee audits;

(12) Ensure a statement of completion of a course concerning personal financial management is filed as required under Bankruptcy Rule 1007(b)(7);

(13) File motions to extend or impose the stay when appropriate;

(14) File motions to complete asset sales contemplated by the plan;

(15) File motions to approve refinancing contemplated by the plan;

(16) file certification in support of discharge;

(17) Take the steps necessary to discharge liens modified under the plan; and

(18) Provide such other legal services as necessary for the administration of the case, including telephone calls and correspondence.

(e) Services Excluded from Presumptively Reasonable Fee. An attorney who is to be compensated under D.N.J. LBR 2016-5(c) may also provide the following services to the debtor and may seek separate compensation under D.N.J. LBR 2016-1 for providing these services:

(1) Defense of any adversary proceeding filed under Bankruptcy Rule 7001;

(2) Representation of debtor in the Court's Loss Mitigation Program;

(3) Representation in adversary proceedings filed by the debtor to invalidate a lien; and

(4) Representation in post-confirmation motions seeking stay relief, dismissal or conversion of the case, or motions to modify the plan.

(f) Pre-Confirmation Fee Application Required for Amounts Exceeding Presumptively Reasonable Fees. A chapter 13 debtor’s attorney who at the outset of a case charges the debtor more than the presumptively reasonable amounts set forth under D.N.J. LBR 2016-5(c) for providing the services included in D.N.J. LBR 2016-5(d) must file and serve on the chapter 13 trustee and the debtor an application for compensation and reimbursement of expenses in accordance with D.N.J. LBR 2016-1 not later than 7 days before the initial confirmation hearing.

(g) Court Approval Required. After the petition is filed, a debtor’s attorney may not accept or demand from the debtor or any other person any payment for services or cost reimbursement without first obtaining a court order under D.N.J. LBR 2016-1 authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor.

(h) Dismissal. An attorney who is to be compensated under D.N.J. LBR 2016-5(c) and who seeks payment of fees for services performed, or reimbursement of expenses, in a case dismissed prior to confirmation must file an application in accordance with D.N.J. LBR 2016-1 no later than 14 days after the entry of the order of dismissal. Applications for compensation filed more than 14 days after the date of dismissal will not be considered.

2017 Comment

This rule increases the presumptively reasonable “no-look” chapter 13 fee from \$3,500 or less to \$4,500 or less in a consumer case. It provides a new separate presumptively reasonable “no-look” chapter 13 fee of \$5,000 or less in a business case. The debtor’s attorney must choose the method of compensation for services to be provided in the case within 14 days after the petition is filed. If the attorney fails to timely choose the compensation method the attorney will be compensated pursuant to the “no-look” fee. An attorney who is to be compensated under the “no-look” fee must file a fee application pursuant to D.N.J. LBR 2016-1 if the attorney requires the debtor to pay more than the stated “no-look fee” before the case is filed. After the case is filed, an attorney who is to be compensated under the “no-look” fee may file a fee application pursuant to D.N.J. LBR 2016-1 if the attorney provides required services excluded from the “no-look” fee. These procedures supersede the former short-form supplemental fee application process in all cases filed after [date].