PROFESSIONAL FEE AND EXPENSE GUIDELINES
IN BANKRUPTCY CASES PENDING BEFORE
THE HONORABLE JANICE MILLER KARLIN,
UNITED STATES BANKRUPTCY JUDGE
(Revised May 7, 2007)

The Court adopts Judge Nugent's Professional Fee & Expense Guidelines dated January 31, 2002 to the extent it does not conflict with the guidelines that are meant specifically for Chapter 13 cases, enunciated below. Judge Nugent's Policy can be found on the Judges' Corner on the Bankruptcy Court's web site.

PROFESSIONAL FEE AND EXPENSE GUIDELINES
IN **CHAPTER 13** BANKRUPTCY CASES PENDING BEFORE
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On February 21, 2007, this Court issued an opinion dealing with the issue of presumptively fair attorney fees for Chapter 13 cases filed post-BAPCPA.[1] Although the Court will not restate its findings of facts and conclusions of law, the Court summarizes the main points, as follows:

1. The presumptively reasonable fee for filing an "average" Chapter 13 case for a below-median income debtor is $2,800;

2. The presumptively reasonable fee for filing an "average" Chapter 13 case for an above-median income debtor is $3,300;

3. If a Motion to Extend the Automatic Stay (or create a stay) is filed, debtor's counsel is entitled to a presumptively reasonable amount of $400;

4. This fee covers all services provide by debtor's counsel and/or firm reasonably required by the debtor to obtain a Chapter 13 discharge (or completion of the case where debtor is not entitled to a discharge) from initial consultation through dismissal or closing of the case;

5. If the presumptively reasonable fee does not adequately compensate counsel for work that counsel believes will be required before filing or pre-confirmation, counsel is always welcome to seek a higher fee. In that case, if any party in interest objects to the reasonableness of the fee requested in the Disclosure of Compensation of Attorney for Debtor, B203, debtor's counsel will be required to justify the requested fee, and pursuant to 11 U.S.C 330(a)(4)(B) and Fed. R.

[1] *In re Beck,* Case No. 06-40774, and others.

Bankr. P. 2016(a), itemize all the services rendered (or expected to be rendered), by whom, the date the work was performed (or is expected to be performed), a specific, detailed description of the work done, and where not self-evident, the purpose of the work, the time spent on each task in tenths of an hour, and the dollar value of the work performed, as well as a recitation of the hourly rates of those performing the work.

6. Debtor's counsel may elect, for legal services rendered on discrete issues, to add a prayer for the specific additional legal fees and expenses that that specific post-confirmation work requires. In the motion, or prayer, counsel needs to generally summarize what work was done by whom and on what dates, sufficient so the Court, the Trustee and creditors can determine the reasonableness of the requested fee.[2] For cases filed after February 21, 2007 (the date of the *Beck* decision) this option is only permissible when debtor's counsel states that the fees already awarded in the case have been consumed by the legal services already provided to debtor. The requirement for this summarization of work and time applies to any fee requested in any motion or response filed after the issuance of the *Beck* decision, regardless of the date the case was filed, since that is the date attorneys were put on notice that more detail would generally be required.

   a. The Court can take judicial notice that attorney and paraprofessional fees of $150 (plus actual mailing expense of any motion and notice) would typically be reasonable in filing and prosecuting most affirmative motions set on negative noticing (e.g., Motions to Abate, Motions to Incur Debt, Motions to Retain Post-Petition Tax Refund, Motions to Modify Confirmed Plan) by the time someone meets with or discusses the issue with the client, delegates preparation or drafts and reviews the motion and proposed order, and then communicates the results with the client. For that reason, if counsel seeks $150 or less, (plus any actual itemized mailing expense), the Court will require little detail in the summary of services rendered.

   b. Similarly, the Court can take judicial notice that most responses to motions, which by definition will typically result in a hearing (e.g., Responses to Motions to Dismiss for default or lack of feasibility, Motions to Compel, Motions for Relief from Stay) would likely result in $200 in attorney and/or professional time, the additional amount to compensate

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[2]For example, the Court routinely receives motions, requesting upwards of $350 in fees or more, that state as the only basis for the fee that "I had to file this motion" or generically say "met [or spoke] with debtor, filed motion, prepared order" – which would presumably happen in every case. When the motion is a three line Motion to Abate, which motion is likely in the firm's "form" base, and it only contains a sentence to distinguish it from the many other similar Motions filed (such as "client had to be off work for 8 weeks for maternity leave"), it is difficult to see how filing that pleading could result in a $350 fee unless additional detail is provided.

counsel for attending a hearing (unless counsel either resolves the matter with the movant or uses the Trustee to seek a continuance or announce a resolution). Again, for that reason, if counsel seeks $200 or less in fees, the Court will require little detail in the summary of services rendered.

c. The Court does not assume that it would require $350, however, to file both an affirmative motion and a response to a motion if they are filed in tandem, i.e. within a short period of time (e.g. a Motion to Abate filed with a Response to Trustee's Motion to Dismiss for default). For that reason, additional detail will be required if fees in excess of the presumptively reasonable $200 fees (plus any actual mailing expenses) are sought.

7. At any point during the pendency of the case, counsel is welcome to file a regular fee application, for example if the legal services rendered post-confirmation exceed the presumptively reasonable amounts set forth above or legal work in addition to that involved in a discrete motion has been performed. For cases filed after February 21, 2007 (the date of the *Beck* decision) , this option is only permissible when the fees already awarded in the case have been consumed by the legal services already provided to debtor.[3] Accordingly, in those cases, counsel will be required to indicate that the fees have been consumed, and then demonstrate the reasonableness of the additional fees to the trustee, creditors, and the Court, with time records maintained or re-created from the outset of the representation, so that the reasonableness and necessity of the additional services rendered can be properly analyzed. If a party in interest challenges the fees, counsel may be required to demonstrate that the prior awarded fee has, in fact, been consumed, by the provision of legal services.

8. As noted above, the Court will not require the certification that prior fees have been consumed for cases filed prior to the decision in *Beck*. This is both because the Court is aware that attorneys who previously chose not to keep track of their time prior to this Court's decision in *Beck* may not be able to certify this fact, and because in many, if not most cases, the fees awarded from the outset of the case were significantly lower than this Court finds was likely reasonable even pre-BAPCPA. Although the Court has stated that the "certification" is not required

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[3]As noted in *Beck*, the Court is well aware that legal services are required post-petition in every case, such as making sure the client completes and files the financial management course information, sending tax returns to the trustee, receiving any electronic communications about the case from the trustee, the Clerk, or others, and notifying the client when the case is complete—at a minimum. To avoid the necessity of filing a motion or fee application to obtain fees for those basic services required in almost every case, the Court assumed a presumptively reasonable fee of $450 for such services. Accordingly, when counsel is indicating that the fee has been consumed, the Court understands this does not include the $450 cushion the Court purposely added in for such services.

for pre-February 21, 2007 cases, the Court expects that attorneys will not seek additional fees for discrete motions unless they believe that fees previously awarded have been consumed. This does not prevent any party in interest, who has a good faith belief that any requested fee is unreasonable, from filing an appropriate objection. In that instance, just like the practice before the *Beck* decision, to receive the fee, counsel will need to demonstrate entitlement to the fee requested, which may then require re-created time records or contemporaneously kept records.

CONCLUSION: The Court recognizes that in the creation of these guidelines it may not have anticipated every conceivable fee and expense concern that could be raised by counsel. Questions should be directed either to the Court's law clerk or to the Courtroom Deputies in the office of the Clerk of the Court.

May 7, 2007

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JANICE MILLER KARLIN,
Bankruptcy Judge, United States

Bankruptcy

Court for the District of Kansas