

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In Re:

**AMENDMENT TO LOCAL BANKRUPTCY
RULE 2016-2**

MISC. NO.

**5-04-mp-50010
(District Wide)**

ORDER

It having been determined by the Court that L.B.R. 2016-2(h) conflicts with the Supreme Court decision in *Harris v. Viegelahn*, 135 S.Ct. 1829 (2015), it is hereby

ORDERED that L.B.R. 2016-2 is amended by deleting subdivision (h) as follows:

Rule 2016-2 *Compensation of Debtors' Attorneys in Chapter 13 Cases.*

The provisions of this rule will apply to all chapter 13 cases filed on or after October 1, 2014.

- (a) *Rights and Responsibilities Agreement.* Unless otherwise ordered by the court, in all chapter 13 cases in which a debtor(s) is represented by an attorney, the debtor(s) and the attorney must execute the Rights and Responsibilities Agreement as set forth in [L.B.F. 2016-2\(a\)](#). Counsel must retain the original Agreement in the case file and provide a fully executed copy to the debtor(s).
- (b) *General Rule.* Except as provided in L.B.R. 2016-2(c), an attorney representing a debtor(s) in a chapter 13 case must file an application for approval of compensation in order to be paid for all services rendered after the filing of the case. The fee application must comply with L.B.R. 2016-1, except the information required under (a)(1) and (a)(8) of that rule may be omitted. A model fee application form for use by attorneys representing chapter 13 debtor(s) is set forth in [L.B.F. 2016-2\(b\)](#) ("Iodestar fee"). The attorney must also file a certification that a Rights and Responsibilities Agreement ([L.B.F. 2016-2\(a\)](#)) has been executed by the attorney and by the debtor(s). Filing of the certification may be accomplished by a virtual entry in the ECF system. After the petition is filed, an attorney may not receive payment of fees except through the chapter 13 plan, unless payment is otherwise approved by the court.
- (c) *Presumptively Reasonable Fee.* When the Rights and Responsibilities Agreement provides for the payment of the presumptively reasonable fee, the attorney may receive compensation in the maximum amount of \$4000.00. Further, no fee application is required to be filed where the presumptively reasonable fee is agreed to. In such case, the attorney is only required to file [L.B.F. 2016-2\(c\)](#) - Request for Payment of Chapter 13 Compensation and Expenses, with parts A and C completed. If the chapter 13 trustee requires the debtor(s) to file a business report, or if the debtor(s) holds a controlling interest in a corporation or LLC operating a business, an attorney may receive additional compensation in the maximum amount of \$1000.00 without seeking approval from the court. An attorney representing a consumer debtor(s) who proposes to make mortgage

- payments through a chapter 13 plan (“conduit plan”) may receive additional compensation of \$500.00, without seeking approval from the court. When an attorney agrees to accept a presumptively reasonable fee, all covered legal services rendered by the attorney through confirmation of the plan, must be included in the fee, except as provided in paragraph (e). Approval of the allowance of a presumptively reasonable fee will be considered by the court at confirmation and any approval will be given by virtue of the entry of the confirmation order. Consideration of the allowance of a fee for the preparation, filing, and defense of a modified plan will be given by virtue of the entry of the order granting or denying the motion to modify.
- (d) *Indication of Type of Fee in Plan.* The attorney for the debtor must indicate in section 3B of the model plan ([L.B.F. 3015-1](#)) whether the attorney seeks the presumptively reasonable fee or the lodestar fee.
- (e) *Additional Fees.* An attorney who has agreed to accept a presumptively reasonable fee may request additional fees under L.B.R. 2016-2(b) for services rendered after confirmation of the plan or in connection with adversary proceedings. In the event that an attorney determines that services required to be rendered before confirmation of plan exceed normal and customary services in a chapter 13 case, the attorney may seek approval of additional fees under L.B.R. 2016-2(b).
- (f) *Post-Confirmation Modification Plans.* An attorney who has agreed to payment of the presumptively reasonable fee may receive additional compensation of \$500.00 for each post-confirmation plan modification which is filed, without seeking approval from the court.
- (g) *Payment of Fees Through Plan.* An attorney who has agreed to be paid through a proposed plan must file a Request for Payment of Chapter 13 Compensation and Expenses ([L.B.F. 2016-2\(c\)](#)) (“Request for Payment”) no later than seven (7) days before the confirmation hearing on the plan. Failure to timely file a Request for Payment may result in a delay of confirmation of the chapter 13 plan. In the event the confirmation hearing is continued, the Request for Payment is not required to be refiled, if no additional fees are requested. When additional fees are requested, a new Request for Payment must be filed no later than seven (7) days before the continued confirmation hearing.

COMMENTS: Effective September 1, 2015, former L.B.R. 2016-2(h) was repealed because it conflicted with the Supreme Court decision Harris v. Viegelahn, 135 S.Ct. 1829 (2015).

L.B.R. 2016-2 is being adopted as of September 1, 2014, to provide for specific procedures for the approval of attorneys’ fees in chapter 13 cases. The new rule will apply to chapter 13 cases which are filed on or after October 1, 2014. The general rule will be applicable to attorneys who have agreed to provide services using the lodestar approach. A fee application form is adopted as [L.B.F. 2016-2\(b\)](#). To provide a more efficient means of approving fees in chapter 13 cases, a presumptively reasonable fee is being adopted; this will enable attorneys to obtain approval for fees in certain amounts without filing a fee application. The rule also adopts a Rights and Responsibilities Agreement form to be completed by all represented debtor(s) and their attorneys. The Agreement specifies the services an attorney will perform, if required under the circumstances of a particular case, as well as the responsibilities of the debtor(s) to assist in the prosecution of the case. The Agreement also will specify the compensation arrangements agreed to by the debtor(s) and the attorney. The rule also provides for a Request for Payment of Chapter 13 Compensation and Expenses to be filed prior to confirmation to allow the chapter 13 trustee

to determine the amount of fees that will be paid through the plan. The rule also provides that when a case is converted or dismissed and the chapter 13 trustee is required to return payments made to the debtor(s), counsel may request the payment of outstanding attorneys' fees.

IT IS FINALLY ORDERED that revised L.B.R. 2016-2 is effective September 1, 2015.

By the Court,


Chief Bankruptcy Judge

Date: August 28, 2015