

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

In re:)
)
Amendment to Local Rule 3020-1) General Order 22-10
Deposit; Confirmation of Plan –)
Chapters 9, 11, and 12)
)

This General Order amends the Nebraska Rules of Bankruptcy Procedure adopted on January 20, 2022. During the next Local Rule revision process, Neb. R. Bankr. 3020-1 will be formally updated.

Following recommendations from the Bankruptcy Practice Committee for the District of Nebraska, debtors in a case under Subchapter V of Chapter 11 must pay the trustee an advance fee and expense deposit as stated in Appendix H.

IT IS THEREFORE ORDERED:

Effective January 1, 2023, Neb. R. Bankr. P. 3020-1 is amended to delete the existing language and replace it with the following:

Rule 3020-1. Deposit; Confirmation of Plan – Chapters 9, 11, and 12

A. **Deposit.** The debtor in a case under Subchapter V of Chapter 11 must pay the trustee an advance fee and expense deposit within five days after the petition is filed and each month thereafter until a Subchapter V plan is confirmed. The amount to be paid is stated in Appendix H. The trustee must keep the advance deposit in a segregated account. The trustee may apply the advance deposit to any trustee compensation approved by the court. The trustee must return any excess amount to the debtor within ten business days after the court approves the trustee's final application for compensation. The debtor must include the amounts paid under this Local Rule in the debtor's proposed cash collateral budget.

B. **Uncontested Confirmation Orders.** In a Chapter 12 case if the debtor complied with Local Rule 9013-1, or in a Chapter 9 or 11 case if the proponent submitted a summary of ballots and complied with Fed. R. Bankr. P. 2002(b)(2), the court may consider the requirement a hearing be held as met and may confirm the plan without further notice or hearing.

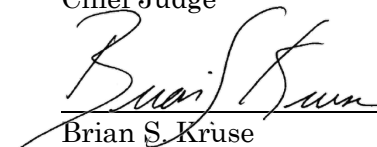
IT IS SO ORDERED:

Dated: December 19, 2022

BY THE COURT:



Thomas L. Saladino
Chief Judge



Brian S. Kruse
Bankruptcy Judge

Appendix H – Revised January 1, 2023

Trustee Fees in Subchapter V of Chapter 11 and in Chapter 12 cases

Subchapter V of Chapter 11

The advance deposit the debtor must pay the trustee in a case under Subchapter V of Chapter 11 is:

Due Date	Amount
Within 5 days of the Petition Date	\$1,000.00
Each Month on the same day of the month as the petition date until a Subchapter V plan is confirmed or until the total amount held by the trustee is \$3,000. If the advance deposit drops below \$3,000 because the trustee was paid authorized compensation from the deposit, the debtor must restart payments until the advance deposit again reaches \$3,000	\$500.00

Chapter 12

A Chapter 12 standing trustee performs a valuable service to the court and to the parties. The trustee participates in the administration of the case in various ways. The trustee examines claims, provides information to creditors, examines the financial affairs of the debtor, reports on any mismanagement, appears at confirmation hearings, monitors plan payments, and files a final accounting. The trustee is paid from plan payments the debtor makes to the trustee to distribute. Under *In re Wagner*, 36 F.3d 723 (8th Cir. 1994), the debtor may pay plan payments directly to creditors. This threatens the Chapter 12 process and creates an inequitable burden on the trustee who must perform statutory duties but may not be paid. Considering the benefits derived from the debtor's reorganization and from the services the trustee provides, requiring a Chapter 12 debtor to pay the trustee a fee is not inequitable.

Whether a plan provides for payments to creditors directly or through the trustee, the debtor must pay the trustee a fee, for each year of the plan, equal to 10% of all payments under the plan (or such other percentage set by the Attorney General or its delegate under 28 U.S.C. § 586(e)), or \$6,000, whichever is less. The debtor must also pay an initial payment of \$200.00, which the trustee may retain if a Chapter 12 plan is not confirmed, or which will be applied as provided in a confirmed plan. This order is entered, without limitation, under 11 U.S.C. § 105.

Chapter 13 Fee Requests

A. **Attorney Fees.** In all Chapter 13 cases, except as provided in Section D, the court will allow attorney fees for debtor's attorney only under the provisions of this "NO-LOOK" Compensation Plan ("NLCP"). The NLCP consists of a Standard Allowable Amount ("SAA") and À La Carte ("ALC") fees for additional services.

B. **Standard Allowable Amount.** When the plan is confirmed, the debtor's attorney may be awarded, without filing a fee application, a SAA not to exceed \$4,700 (\$4,400 for fees and \$300 for expenses). The SAA covers all services the debtor's attorney typically performs when representing a Chapter 13 debtor, including:

1. Meet with the debtor to review the debtor's debts, assets, liabilities, income, and expenses; counsel the debtor whether to file a Chapter 7 or Chapter 13 case, discussing both procedures and answering the debtor's questions; and explain what payments the debtor must pay directly and what payments the debtor must pay through the plan, particularly mortgage loan payments and other claims that accrue interest.
2. Advise the debtor how, when, and where to make Chapter 13 plan payments and to pay the first plan payment within 30 days after the petition is filed.
3. Advise the debtor regarding the § 341 meeting of creditors, including its date, time, and place, and provide representation at the meeting.
4. Advise the debtor to maintain liability, collision, and comprehensive insurance on vehicles securing loans or leases.
5. Verify and timely file six months of pay stubs; verify two years of complete tax returns including W-2s and submit them as required under the rules; verify and review six months of bank statements; review relevant documents, including insurance policies, additional bank statements, driver's licenses, Social Security cards, electric/gas/water bills, domestic child support orders, judgments, and purchase agreements; complete and file the certification by debtor in support of confirmation in Appendix "M"; and complete and file Form B22C.
6. Prepare and timely file the debtor's petition, plan, statements, and schedules. Respond to objections to plan confirmation and, when necessary, prepare an amended plan.
7. Prepare, file, and serve amended statements and schedules and pre-confirmation modifications to the plan.
8. Represent the debtor regarding confirmation hearings. (Participating in affidavit hearings for confirmation is not considered providing an extraordinary service which justifies additional fees).

9. Complete and file the certification by debtor in support of discharge in Appendix “L”; and help the debtor obtain pre-petition credit counseling and post-petition financial education.

10. Prepare, file, and serve post-confirmation amended statements and schedules.

11. Address the trustee’s first notice of default in a Chapter 13 proceeding which results in a stipulation without an amended plan.

12. Represent the debtor in connection with the first motion for relief from the automatic stay.

13. Communicate and provide other services typical for representation of Chapter 13 debtors through the end of the case.

C. ALC (à la carte) Fees. If the debtor’s attorney performs services listed in Appendix “E-2” the debtor’s attorney may file the certification in Appendix “E-2” and serve parties in interest. The certification is a motion under Local Rule 9013-1 and the debtor’s attorney must serve parties in interest. The debtor’s attorney must serve the debtor a paper copy of the certification. ALC fee requests cannot be stacked if the service or services involved one larger transaction, regardless of the number of motions, including amended motions or new motions that amend a prior request. The court will not award ALC fees for cursory, generic, routine, or non-substantive motions, objections or resistances that are later withdrawn or denied for failure to comply with local rules, or for services rendered due to oversight, inexperience, or inefficiency.

D. Exceptions. The debtor may file a fee application in the form of Appendix “E-3” in the following extraordinary situations, which the court will closely scrutinize.

1. A business-related case or complex case that requires significantly more legal work than a typical Chapter 13 case.

2. A case that requires a confirmation trial, adversary proceedings, or a trial of a contested matter. Hearings on affidavits are not extraordinary.

3. In a case dismissed before the initial plan is confirmed, the debtor’s attorney may file a fee application within seven days after dismissal for actual fees and expenses incurred, not to exceed the SAA.

4. If the debtor retains a new attorney, the new attorney must file a fee application. If the new attorney is retained before the initial plan is confirmed, the original attorney and new attorney must each file a fee application. Post-confirmation, the new attorney may request ALC fees or file a fee application.

E. Miscellaneous Provisions.

1. After an ALC request is filed, the Chapter 13 trustee must, within seven business days, reserve available funds for up to 60 days in anticipation the request will

be approved. The trustee must continue to pay adequate protection payments, which have priority over ALC fee requests.

2. The court will periodically review and adjust the SAA and individual ALC items.

3. The debtor's attorney may receive a pre-petition retainer from the debtor. Post-petition fees will be paid through the plan, except court costs to add creditors post-petition, costs to process the financial management certificate, fees to dismiss or convert the case to another chapter, and as otherwise ordered by the court.