

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

BENCH – BAR MEETING

JULY 23, 2020

AGENDA:

1. The Chapter 13 "No Look Fee"
2. Chapter 13 Conduit Plans
3. Unclaimed Funds: New procedures and forms are on the website.
<https://www.lamb.uscourts.gov/unclaimed-funds>
4. From Ms. Abide: Debtors' counsel should instruct their clients how to conduct themselves during telephonic meetings of creditors because numerous parties are on the conference line at the same time (e.g. quiet background, wait for a question directed to them speak, stay quiet while waiting for their meeting).
5. From Ms. Nance: Please outline the specific information Judge Dodd would like to see included in motions to approve loan modifications beyond the basic loan terms. The "amount capitalized" has been requested fairly routinely, and mortgage companies often want to know what information is being requested.

No-Look Fee changes proposed by debtor bar
June 3, 2020

What should the ch. 13 no look fee be? \$4,500 w-2 only; \$5,500 1099 or Sch. C.
What should this fee cover? Confirmation plus 120 days

Additional fees:

Motion to Impose/extend auto stay \$500

Objection to claim: \$500

File POC when creditor does not: \$300

Oppose Motion to Dismiss: \$300

Oppose Motion to Lift Stay: \$300

Mod plan: \$900

Motion to Obtain Tax Refund: \$500

Motion to Incur Debt: \$500

Objection to Post-petition Fees: \$500

Motion to Approve Loan Mod: \$500

**Chapter 13 Trustee's Response to
Debtor's Compensation Request**

Debtors counsel in the Middle District of Louisiana currently receive no-look attorney fees through the first year of the case of \$3000. There is no limit on how much they may receive up front or how quickly they can be paid in the plan. It is customary for debtor counsel to receive all the plan payment after trustee commission until they are paid in full before other creditors begin to receive funds with the exception of nominal adequate protection payments in less than half the cases. After 12 months, a variety of fees are charged, with the exception of modified plans which are compensated at a rate of \$600, and by local rule are to include an amended Schedule I and J and income documentation, shall identify the changes in debtor's circumstances and if applicable, the reason the debtor failed to make plan payments or post-petition payments to secured creditors. Debtor counsel also routinely receives \$2600 in cases that do not confirm (of 1406 cases filed in 2018 and 2019, 539 were dismissed or converted without confirmation). Although it is customary to request additional attorney fees in the motion along with the relief sought, recently there have been fees sought for services performed years earlier rather than seeking the fees contemporaneously with the service performed or within a reasonable time period afterwards (a motion to sell property where the fees could have been paid out of the proceeds). Currently, there is no reduced fee for small dollar cases or attorney fee only cases.

Trustee believes that to maintain a competent debtor bar, a fair attorney fee for the work performed is a necessity. The initial presumptive attorney fee in our district has been the same for several years and additional attorney fees can be charged after the first 12 months of the case for various motions.

Trustee has reviewed the fees awarded in the other districts around the country. It is noteworthy that the current modified plan fee of \$600 is greater than most other districts posting their fee and the dismissal fee of \$2600 in unconfirmed cases is also higher than in many districts posting their dismissal without confirmation fee. There are also courts who do not allow unlimited pre-petition retainers, and limit the initial payment after confirmation minus the retainer and limit the monthly amount of subsequent payments or require that they be spread over a minimum time period or the entire case ([Exhibit A, Trustee spreadsheet of attorney fees by district](#)).

Many of the attorney fees included on debtor counsels' chart for other districts are for the life of the case whereas the proposal submitted by local debtor counsel has asked for not only a substantial increase in no look fees, but also requests additional compensation, in even higher amounts than currently received or currently paid in other districts. ([Exhibit B, Debtor Counsels' Proposal](#)). In fact, debtors counsel has requested to be paid comparable fees to states with the highest cost of living. Combined with the extra menu of costs suggested, the Middle District would move to the most expensive place to file Chapter 13 with the possible exception of the AO Eastern District of North Carolina and perhaps the Northern District of California. The large jump in fees requested is out of line with current fees, with the cost of living, and with the compensation paid in rest of the country.

Trustee is not opposed to a fair increase in the no look fee. A standardized rate of fees may be beneficial for other services along with a description of what is necessary to earn the fee.

If the no look fee is raised substantially as has been requested, trustee urges the Court to adopt the fee for the entire case with the exception of adversary proceedings or extraordinarily and exceptional circumstances. In addition, trustee suggests that it would be appropriate to designate a portion of the fee to be paid upon successful completion of the case and structured in the plan to be collected by the trustee the last few months of the case.

Alternatively, if the no look fee is substantially increased, the fee should be the only compensation for 24 months, and fees charged for additional services should be reduced from the current level and set at specific amounts (\$300 for a modified plan, \$150 to respond to a Motion for Relief or Motion to Dismiss or Convert).

Debtor Counsels' Proposal

The proposal submitted by a representative of the Middle District of Louisiana's debtors bar seems to be requesting a fee increase from \$3000 to \$4,500 for w-2 only cases and the addition of a new category of attorney fees for this district of \$5,500 for cases if either debtor receives a 1099 or files a Schedule C. No other district attempts to delineate cases as either W-2 or 1099/Schedule C cases. There are many districts that break out business and non-business cases, or above or below median income cases, but none that classify cases in the way suggested here. If the Court feels a separate category of fees is warranted, the classification as business or non-business along with what that entails seems more tenable and a suggested definition for what constitutes a business case is attached as [Exhibit C-Business Case Definition](#). A 1099 should not result in a case being classified as a business case. Form 1099s are received for retirement, social security, mortgage interest, gambling, SNAP benefits, etc. Likewise, filing a Schedule C for the prior tax year should not be dispositive. Often the Schedule C turns out to be added by a less than reputable tax preparer to increase the refund (of which they get a percentage) when there was never a business. Since the change in the tax law which removed the often-abused category of "job expense", it is common for tax preparers (not CPA's) to use a schedule C to get around the tax law change and claim job expenses for regular employees.

Trustee has attached a suggested definition for business cases ([Exhibit C-Business Case Definition](#)) if the Court is interested in entertaining a separate fee, along with the Business Schedule I and J ([Exhibit D, Business Schedule I and J](#)) which she also suggests should be filed with the initial pleadings in the case if it meets the criteria of a Business case. Trustee has also attached a review of the cases filed in the last 18 months which purport to have "business" income, or self-employment income to show whether counsel filed a Business Schedule I and J initially and whether self-employment tax was budgeted by debtor's counsel initially. ([Exhibit E, Review of 18 Months cases](#)). The debtor bar rarely treats business cases differently than regular cases. The few actual business cases filed rarely make it to confirmation once the actual financial picture is ascertained. These cases would be better handled by a regular fee application rather than a separate category of no look fees. Most of what would be considered business cases under the proposal submitted by the debtor bar's representative (1099 or Schedule C's filed), rarely result in much net income to the case and trustee routinely does not ask for a Business I and J. Debtor counsels commonly supplement a shortfall in income with "cutting grass", "babysitting",

“sitting”, “cleaning houses”, Lyft or Uber or Waiter. This income is generally less than \$1000 and trustee does not require special documentation, partly because debtors cannot provide it. This type of case is not a true “business case” worthy of the huge fee increase requested.

In addition to requesting a \$1500-\$2500 increase in no-look fees, the representative of the debtor bar presenting the proposal has also asked to continue to receive fees for the post no-look fee period, but at even higher rates than currently charged, such as increasing the modified plan fee from \$600 to \$900, \$500 for a motion to impose/extend in the first year in addition to the substantial fee increase. The request includes \$500 to oppose an objection to post petition fees (presumably by a mortgage company) without reference to these fees being dependent on the outcome of the objection or the amount of the post-petition fees objected to or whether the post-petition fees were accurate when filed but later paid by the debtor, \$500 to prepare what is traditionally a one page loan modification document and attach the mortgage company package, \$500 to file a Motion to Obtain Tax Refund, and \$500 to object to a proof of claim (presumably after the first year of the case and presumably only for claims filed after the first year of the case and only if objecting to the claim serves a purpose. For example, if the case pays a 10% dividend to unsecured creditors, objecting to a \$300 claim would serve no purpose other than to generate \$500 for debtor’s counsel taken from unsecured creditors who would not benefit).

Trustee’s Suggested changes to Middle District Fee Structure

The fee scheme below is similar to the Western District of Louisiana approved in April, 2020, which would bring consistency to a large part of Louisiana.

To earn no look fees, a Rights and Responsibilities Form Must be signed by debtors and debtor’s counsel and filed in the Record along with the Attorney Disclosure within 14 days of the filing of the case. (Exhibit F).

- a) \$2000 maximum fee if case is dismissed or converted before confirmation** when based on the initial schedules, plan or means test filed, the plan is not confirmable or feasible for one or more of the following reasons: 1) insufficient funds available on Line 23c of Schedule J to fund the plan payment, 2) the initial Schedule I includes income that does not exist at the time the initial schedules are filed causing line 23a of Schedule J to be less and when adjusted to remove fictitious or unrealized income as of the date the initial schedules were filed, line 23c of Schedule J is insufficient to fund the plan payment, 3) the plan does not pay the liquidation value, or 4) the plan does not meet the means test. *If the plan is confirmed, this fee level does not apply and the regular no look fee applies.*
- b) \$2600 maximum fee if case is dismissed or converted before confirmation-** (may be less depending on work performed or if total plan payment is less than \$260 per month, should not exceed 10 x plan payment). Would apply in cases that category (a) does not apply.
- c) 10 x the monthly plan payment if the plan payment is less than \$300 per month.**

- d) **\$3600 standard no-look fee, includes all matters for 18 months** from the petition date plus represent debtor in the first Motion for Relief, Motion to Dismiss or Convert, or Modified plan beyond 18 months.

Fee Enhancements

- e) **\$200** -if confirmed the first time the case is scheduled for confirmation, to be added in confirmation order
- f) **\$200** - if the case includes a mortgage conduit payment
- g) **\$300 for a Motion to Impose/Extend Stay-** *this fee is only earned if the following criteria are met:* the motion is filed within 5 days of the petition date, all pleadings, payment advices and tax returns (most recent year and any missing returns) are provided no later than 14 days from filing without extension, the Motion to Impose includes/describes the reason that the new case will be successful when the prior case or cases were not (not just a self- serving statement that the case is filed in good faith), mortgage arrears, tax claims and unsecured debt is accurately portrayed in the plan by reviewing claims filed in the prior case and adding the appropriate number of months since the filing of the last case, contacting the creditor to obtain the information if no claim was filed, adding tax liability of any missing returns. The proper parties must be timely and correctly noticed in the initial notice.
- h) **\$400 for a Business case**, defined in Exhibit C, where all tax returns were filed pre-petition, payment of self-employment tax and any other required tax is included in the initial schedules, documentation that debtor has set up an account with www.eftps.gov has been filed into the record within 5 days of the petition date, and a Business Schedule I and J using the format in Exhibit D is included with the timely filed initial pleadings along with all means test and subsequent income information.

Additional Fee Schedule

The following additional fees may be earned after 18 months following the petition date have elapsed (unless it is the additional service included in the no look fee as described in Section d):

1. **\$500 for Modified plan** including timely filed amended schedules I and J along with recent paycheck stubs and documentation of reason causing need for modified plan. *For each court date missing the Schedule I, J, pay advices or documentation, subtract \$100 automatically without discussion of fault.*
2. **\$350** to defend Motion for Relief resulting in a consent order or withdrawal of the Motion for Relief (there will be no fees awarded for a response to a MLS for property not scheduled or not being retained). A response that says the attorney has not been in contact with the client will not be compensated.
3. **\$250** for response to Motion to Dismiss or Convert that provides a repayment schedule over two months and provides the debtor's employment information if the debtor has changed employers. A response that says that the attorney has not been in contact with the client will not be compensated.

4. \$250 for a successful claim objection for a claim filed after 18 months from petition date where the claims objection serves a purpose (the savings to the unsecured creditors must exceed the cost of the attorney fees).
5. \$350 for any other motion

Fees arising out of the same circumstances can not to be stacked. The maximum fee for a modified plan filed to cure mortgage arrears or plan arrears is \$500 if all requirements of paragraph 1 above are met plus an additional \$100 for the response to the Motion to Dismiss or Convert or Motion for Relief.

If additional fees are not requested within 6 months of the services performed, they are waived. The best practice is to request approval of fees in the Motion or Pleading giving rise to the fees.

PROPOSED CONDUIT MORTGAGE PAYMENTS PROGRAM SYNOPSIS
MIDDLE DISTRICT OF LOUISIANA

- I. **Required Conduit payments** -- Regular payments owed by a Debtor to a Creditor holding a claim secured by the Debtor's principal residence shall be made by the Debtor to the Trustee for payment through the Chapter 13 plan if the Debtor is:
- a. delinquent by more than one mortgage payments as of the petition date, or
 - b. becomes delinquent after the petition date.

II. **Debtor's Duties**

- a. Within 7 days of the filing of the petition, debtor shall upload a completed Mortgage Information Sheet (Exhibit A) and Authorization to Release Information to the Trustee Regarding Secured Claims (Exhibit B).
- b. Debtor's plan shall provide for:
 - i. Conduit Payment of the monthly mortgage payment
 - ii. Payment of pre-petition arrears as
 1. Estimated by debtor until the proof of claim is filed, or
 2. Stated in the proof of claim filed by Mortgage Creditor, and
 - iii. Gap Payments-Two-months of post-petition payments to address inevitable delays in disbursing regular monthly payments due to timing of debtor plan payment to trustee and timing of Trustee's normal distribution schedule
- c. Debtor shall make the first plan payment (including the conduit payment), no more than 30 days from the petition date. All subsequent plan payments are due by the 25th of each month for the remainder of the plan
- d. File a claim on behalf of the mortgage creditor if the mortgage creditor does not file a claim by the claims bar date. The plan will not be confirmed and no funds disbursed to mortgage creditor until proof of claim is filed

III. **Trustee's Duties**

- a. The Trustee will not make payments to the Real Property Creditor on the pre-petition arrearage or the conduit payment until such time as a Proof of Claim is filed with the Court including Form 410A [Mortgage Proof of Claim Attachment]
- b. The Trustee is required to make a full mortgage payment for each full plan payment made. The Trustee is not required to make partial payments to Real Property Creditors. If there are insufficient funds to pay the full conduit payment, the trustee shall reserve the amount received until a full payment can be made.
- c. Following the passage of 21 days from the filing of a Notice of Mortgage Payment Change [Form 410S1] filed in accordance with Federal Rule of Bankruptcy Procedure 3002.1., or the filing of a Notice of Post-Petition Mortgage Fees, Expenses, or Charges pursuant to Rule 3002.1 (Official Form

410S2) that increases the monthly mortgage payment, which is served on the Trustee, Debtor, and Debtor's Counsel, the Trustee shall be authorized, to disburse the new conduit payment without seeking formal modification of the plan and to increase the plan payment by an amount sufficient to pay the increased conduit payment and trustee commission, unless an objection to the Notice of Mortgage Payment Change is filed within 10 days of the filing of the Notice of Mortgage Payment Change. Trustee shall file an amended Confirmation Order reflecting the new Plan Payment.

- d. At plan completion, if debtor has made all payments required under the plan, the Trustee shall file a motion seeking and order of the Court determining that all pre-petition and/or post-petition defaults on Debtor's home mortgage are deemed cured and all payments made through completion of the plan are current, with no arrearage, no escrow balance, late charges, costs or attorney fees owing, except to the extent the court orders otherwise

IV. Real Property Creditor Duties

- a. File a Proof of Claim, including Form 410A [Mortgage Proof of Claim Attachment]
 - a. If Real Property Creditor is entitled to advance or incur expenses in connection with the servicing of the note or mortgage, it shall file Official Form 410S2 [Notice of Post-petition Mortgage Fees, Expenses, or Charges] in accordance with Federal Rule of Bankruptcy Procedure 3002.1(c). If the debtor remains current on plan payments, the mortgage creditor may not assess or see to recover late fees or penalties incurred on post-petition conduit payments.
 - b. By the 20th of January of each plan year, file a 12-month summary of activity on the loan with a form substantially in conformity with Exhibit C [Model Mortgage Payment History].
 - c. File any notice of transfer of claim in accordance with Federal Rule of Bankruptcy Procedure 3001(e)
 - d. File a Notice of Transfer or Assignment of Claim or Notice of change of address to which payments shall be made at least 45 days prior to the change in compliance with Rule 3001(e). If the Mortgage Creditor does not file the Transfer, Assignment, Change of Servicer Name, or Change of Payment Address in accordance with Rule 3001(e), the Trustee will not acknowledge the change or change the party to whom payments are disbursed. Neither the debtor nor the trustee shall be responsible for the failure to credit payments made because the creditor did not follow Rule 3001 (e).