

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

STANDING ORDER 2019-03

RESCISSION AND REPLACEMENT OF MASSACHUSETTS LOCAL BANKRUPTCY RULE,
APPENDIX 1, RULES 13-2 AND 13-7, AND OFFICIAL LOCAL FORMS 8 AND 17

Effective June 17, 2019, MLBR Appendix 1, Rules 13-2 and 13-7, and Official Local Forms 8 and 17 are hereby rescinded and shall be replaced by the revised MLBR Appendix 1, Rules 13-2 and 13-7, and Official Local Forms 8 and 17, attached hereto.

IT IS SO ORDERED:



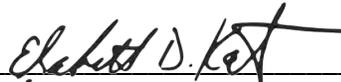
Chief Judge Christopher J. Panos



Judge Frank J. Bailey



Judge Melvin S. Hoffman



Judge Elizabeth D. Katz

Dated: June 17, 2019

RULE 13-2.**COMMENCEMENT OF CASE**

(a) In addition to the requirements of MLBR 1007-1, as amended by Standing Order 2018-01, the debtor shall:

(1) file with the Court and submit to the chapter 13 trustee:

(A) with the petition:

- (i) evidence of current and sufficient liability and property insurance (not including insurance obtained by any secured party) with respect to any real property or vehicle in which the debtor has an interest; and
- (ii) an acknowledgement consistent with MLBR Official Local Form 8.

EXCEPT that, if the debtor fails to file such documents with the petition, the Court shall issue an order notifying the debtor and the debtor's attorney, if applicable, that, if the missing documents are not filed within fourteen (14) days from the date of commencement of the case, and the Court has not allowed a motion to extend the time for filing the missing documents filed pursuant to subsection (b) below, the Court may dismiss the case at the expiration of that period without a hearing; and

(2) if the debtor is a debtor engaged in business, as set forth in 11 U.S.C. § 1304, submit to the chapter 13 trustee:

(A) within seven (7) days after the commencement of the case:

- (i) evidence of current and sufficient business insurance; and
- (ii) evidence that appropriate debtor-in-possession checking accounts were opened at the time of the filing of the petition;

(B) within fourteen (14) days after the commencement of the case, a profit and loss statement for the calendar year or fiscal year, whichever is applicable, preceding the year in which the case is filed, and a profit and loss statement for the period from the end of the calendar or fiscal year to the date of the filing of the petition; and

(C) within thirty (30) days of the close of each quarter, a statement of quarterly income and expenses incurred.

(b) Any motion requesting an extension of time to file documents required under this Rule shall be filed before the expiration of the filing deadline, shall set forth the specific

cause for the request, the amount of additional time requested, and the date the petition was filed, and shall include a certificate of service evidencing that the motion was served on the chapter 13 trustee.

- (c) Any motion to amend or notice of amendment, if applicable, of a voluntary petition, schedule(s), and/or statement of financial affairs filed pursuant to MLBR 1009-1 shall be served upon all parties affected by the amendment and the chapter 13 trustee. The motion or notice and proposed amendment shall be accompanied by a certificate of service identifying the parties served. An amendment adding a creditor or party in interest shall be accompanied by 1) the fee prescribed by the Administrative Office of the United States Courts, if applicable, and 2) an amended matrix including the names and addresses of the added parties.

RULE 13-7. PROFESSIONAL COMPENSATION AGREEMENTS; DISCLOSURES; APPLICATIONS FOR COMPENSATION; PREPETITION COMPENSATION AND RETAINERS

- (a) Disclosure of Prepetition Retainers and Compensation. The amount of any retainer and any compensation received by the debtor's attorney within one year before the filing of the petition in bankruptcy or agreed to be paid for services rendered or to be rendered in contemplation of or in connection with the debtor's bankruptcy case shall be included in the Disclosure of Compensation of Attorney for Debtor (Director's Form B2030) filed pursuant to Fed. R. Bankr. P. 2016(b) (the "2016(b) Statement").
- (b) Disclosure of Other Compensation. If the debtor's attorney has received payment of compensation for services provided to the debtor within one year before the filing of the petition in bankruptcy or has provided services to the debtor within one year before the filing of the petition in bankruptcy, other than in contemplation of or in connection with the debtor's bankruptcy case, the debtor's attorney shall file a statement disclosing the amount of such compensation (the "Supplemental Compensation Disclosure") in addition to the 2016(b) Statement to the extent not otherwise disclosed by the debtor on the Statement of Financial Affairs (Official Form 107) at Part 7 or 8.
- (c) Engagement Letter/Fee Agreement. In addition to any requirements of Rule 1.5 of the Massachusetts Rules of Professional Conduct and 11 U.S.C. § 528, the debtor's attorney shall enter into a written agreement with debtor describing the scope of representation and the basis or rate of the fees and expenses for which debtor will be responsible before or within a reasonable time after commencing representation. The agreement shall clearly state (i) the fees to be charged for representing the debtor in the chapter 13 case, (ii) that neither the "no look" fee set forth in subsection (e) below nor any other amount paid by, or on behalf of, the debtor for services to be rendered in connection with a chapter 13 case shall be considered to be a "flat fee," if reasonable fees incurred by the debtor's attorney for services actually rendered prior to or after the filing of the petition do not exceed compensation paid by or on behalf of the debtor, (iii) that the debtor may be entitled to a refund of some or all fees paid or retainer given under certain circumstances in the event that services rendered are not consistent with the time and labor expended, the novelty and difficulty of the questions involved, and/or the skill requisite to perform the services efficiently and in accordance with applicable rules and law, and (iv) that the debtor is entitled to seek review by the Court of the reasonableness of any fees or expenses. The debtor's attorney and the debtor shall also sign and file an acknowledgement consistent with MLBR Official Local Form 8.
- (d) Refunds on Dismissal and Time Records Requirements. Time and expense records in connection with services rendered in contemplation of or in connection with the debtor's bankruptcy case shall be maintained by the debtor's attorney both before and after commencement of a chapter 13 case. If the chapter 13 case is dismissed and actual fees,

calculated at hourly rates, and expenses incurred on behalf of the debtor for the chapter 13 case are less than amounts received by the debtor's attorney as a retainer, a "flat fee" or other compensation in contemplation of commencement of or in connection with the chapter 13 case, the amount by which such retainer, "flat fee" or other compensation exceeds actual fees, calculated at hourly rates, and expenses incurred by the debtor shall be refunded to the debtor unless authorized in writing by the debtor to be applied to post-dismissal services or otherwise ordered by the Court.

- (e) "No Look" Amount. Unless otherwise ordered by the Court, if the debtor's attorney has been paid compensation or has accrued fees for services in contemplation of or in connection with the debtor's chapter 13 case at any time prior to entry of a confirmation order (including prepetition) (i) for pre-confirmation services totaling \$4,000 or less and Qualified Expenses (defined below) totaling \$1,000 or less and (ii) for post-confirmation services up to an additional \$1,000, and any amount by which pre-confirmation fees were less than \$4,000, plus Qualified Expenses, the disclosure of the compensation made in the 2016(b) Statement and in the Statement of Financial Affairs shall be sufficient and the filing of an itemized application for compensation shall be excused. Unless otherwise ordered by the Court, any payment of fees or expenses not made prior to the petition date and disclosed in a 2016(b) Statement shall be paid through a plan.

For purposes of this Rule, "Qualified Expenses" are out of pocket expenses actually incurred by the debtor's attorney on behalf of debtor for filing fees, appraisals or opinions of value, UCC searches, title examinations, credit reports, certified copies, recording fees, postage or third-party document service charges, and counseling and financial management courses offered by agencies meeting the requirements of 11 U.S.C. § 111. Qualified Expenses may also include charges for copying at a rate not to exceed 15 cents per page or such lesser amount as may be comparable to the charges of an outside copying service.

- (f) Application Required for Compensation Exceeding the "No Look" Amount.
- (1) Compensation up to \$10,000. A debtor's attorney who is not exempt from filing an application for compensation pursuant to subsection (e) above, and who proposes to be paid total compensation of no more than \$10,000 of fees in providing prepetition services in contemplation of, or postpetition services in connection with, the debtor's bankruptcy case shall file an application for compensation in accordance with MLBR Official Local Form 17 seeking approval of the full amount of such fees (not just the amounts in excess of the "no look" fee provided in subsection (e) above), unless the Court orders otherwise.
 - (2) Compensation in Excess of \$10,000. An attorney who proposes to be paid total compensation in excess of \$10,000 for services rendered in contemplation of or in connection with the debtor's bankruptcy case shall file an application for compensation in accordance with Fed. R. Bankr. P. 2016 and MLBR 2016-1

seeking approval of the full amount of such fees (not just the amounts in excess of the “no look” fee provided in subsection (e) above).

- (g) Notwithstanding the requirements of subsection (f)(1) or (f)(2), an attorney required to file an application for compensation may, prior to allowance of such application, apply as interim compensation up to \$4,000 of any amounts received prior to the petition date and disclosed in a 2016(b) Statement, subject to further order of the Court with respect to such application. An attorney required to file an application for compensation may also, prior to allowance of such application, pay Qualified Expenses up to \$1,000 from any amounts received prior to the petition date and disclosed in a 2016(b) Statement, subject to further order of the Court with respect to such application.

- (h) Service. Unless otherwise ordered by the Court, the debtor’s attorney shall serve a copy of any application for compensation on the debtor, all creditors, parties requesting service of all pleadings, and the chapter 13 trustee and shall file a certificate of service evidencing such service to that effect with the application. If no objections are filed within twenty-one (21) days of service, the Court shall award fees in its discretion, with or without a hearing, in accordance with applicable law.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re

Case No.

Debtor(s)

Chapter 13

**ACKNOWLEDGMENT BY DEBTOR(S) AND ATTORNEY FOR DEBTOR(S) OF RESPONSIBILITIES IN
CHAPTER 13 CASES**

It is important for both the chapter 13 debtor(s) and the attorney for the chapter 13 debtor(s) to understand their responsibilities. To foster such understanding, the following provisions set forth responsibilities for a successful completion of a chapter 13 case. This Acknowledgment of these responsibilities is not the written agreement required by MLBR Appendix 1, Rule 13-7(c). Please be sure that the debtor(s) and attorney have also executed such an agreement.

The parties acknowledge by their signatures below that they have read and that they understand the following provisions.

BEFORE THE CASE IS FILED

The **DEBTOR(S)** agrees to:

- 1) Discuss with your attorney your objective in commencing your chapter 13 case after considering filing a case under chapter 7 or chapter 11 and inform your attorney of any imminent deadlines.
- 2) Provide your attorney with documentary evidence of your income from all sources and the value of assets in which you have an interest, together with a copy of any declaration of homestead, as well as proof of insurance on any real property or automobiles in which you have an interest, a copy of your last federal tax return, and any other documents that your attorney believes that the trustee might reasonably request in order to assess whether your proposed chapter 13 plan should be confirmed.
- 3) Promptly respond to all communications from your attorney.
- 4) Cooperate with your attorney in preparing all required bankruptcy forms and other required documents.
- 5) Obtain a Certification of Credit Counseling.
- 6) Review all drafts of documents and promptly advise your attorney of any corrections or additions that may be required before signing the petition, schedules, and chapter 13 plan.

The **DEBTOR(S)** understands the following and that the Debtor(s) will:

- 1) Meet in person with your attorney to review your debts, assets, income, and expenses, as well as your objectives in commencing a chapter 13 case.
- 2) Be provided with a fully executed copy of an Engagement Letter or Fee Agreement.
- 3) Be advised of the requirements for obtaining a credit counseling certificate before the case is filed and the necessity of completing the financial management course in order to obtain a discharge.
- 4) Be required to provide documentation about household income, including pay advices and tax returns, and be advised about the on-going need to both timely file tax returns and pay post-petition taxes.
- 5) Be required to provide documents to your attorney such as deeds, mortgages, tax returns, paystubs, and/or other information that may be needed for your attorney to timely prepare, review, and file the petition, statements, schedules, and chapter 13 plan.
- 6) Sign your petition and chapter 13 plan and other documents requiring your signature after verifying with your attorney that the information is consistent with documentation provided (redacted where appropriate of all personal identifiable information).
- 7) Be advised how, when, and where to make the chapter 13 plan payments to the trustee, and, if applicable under the chapter 13 plan, be advised of the obligation to continue making direct payments to secured creditor(s), without interruption, and the likely consequences for failure to do so.
- 8) Be made aware of the requirement to attend the 11 U.S.C. § 341 meeting of creditors and the consequences of failing to appear.
- 9) Be required to maintain current and sufficient property and liability insurance if you own any real estate, automobiles, or other valuable personal or business assets.
- 10) Be aware that some claims will accrue interest after the case is filed and others may not be discharged upon completion of the chapter 13 plan, such as student loans.

AFTER THE CASE IS FILED

The **DEBTOR(S)** agrees to:

- 1) Inform your attorney of any changes to your address, telephone number, or other contact information.
- 2) Timely make chapter 13 plan payments to the trustee as instructed by your attorney or the trustee.
- 3) Timely make payments directly to secured creditor(s) pursuant to your chapter 13 plan, if applicable.
- 4) Inform your attorney promptly if any of the following circumstances arise:
 - a) you lose your job or have other financial problems (your attorney may be able to have the chapter 13 plan payments reduced or suspended in those circumstances);
 - b) you are sued or are contemplating filing a lawsuit or settling a pending lawsuit;
 - c) you want to buy, sell, or refinance any real or personal property;
 - d) you need to borrow money (e.g., to replace a vehicle);
 - e) you receive a tax refund, bonus, or other unexpected funds;
 - f) you have suffered a loss with respect to any property (e.g., automobile accident, house fire); and
 - g) you experience other circumstances that may require modification of your chapter 13 plan, such as a divorce or the death of a co-debtor spouse;
- 5) Complete the required instructional course in personal financial management.
- 6) If you have a domestic support obligation, advise your attorney of your payment obligations and the contact information for the recipient of the domestic support obligation, and be aware that you must make all required payments to be eligible for a discharge.
- 7) Understand that your attorney cannot guarantee the outcome of your chapter 13 case and understand that the Court might make a ruling adverse to your perceived interests.
- 8) Comply with all orders of the Bankruptcy Court.

The **ATTORNEY** understands that services to be delivered include the obligation to:

- 1) Provide legal services as necessary for the administration of the case consistent with MLBR 9010-2 and MLBR Appendix 1, Rule 13-6, and all other applicable federal and local rules of bankruptcy procedure.
- 2) Appear at the 11 U.S.C. § 341 meeting of creditors with the debtor(s) and inform the debtor(s) as to the date, time, and place of any meeting(s) of creditors.
- 3) Where appropriate, prepare, file, and serve motions and notices of hearings in connection with assisting the debtor(s) in achieving the goals of the chapter 13, such as filing modified chapter 13 plan(s), amended schedules and statements, motions to extend or impose the automatic stay, motions for turnover of repossessed property necessary for an effective reorganization, motions to avoid judicial liens on real or personal property, motions to deem a mortgage current, applications to engage brokers, appraisers or special counsel, and motions for authority to sell property or incur debt.
- 4) Review claims filed in the case, object to improper or invalid claims, or file surrogate claims, if warranted, based upon documentation provided by the debtor, and review and address Notices of Mortgage Payment Change, Notices of Fees, Expenses, and Charges, and Responses to Notices of Final Cure.
- 5) Respond to reasonable inquiries to assist the debtor(s) in achieving the objectives of the chapter 13 case.
- 6) When required, prepare, file, and serve an Application(s) for Compensation.

The attorney and the debtor(s) acknowledge that (i) they have clearly stated in writing the fees to be charged for representing the debtor(s) in the chapter 13 case, (ii) neither the “no look” fee set forth in MLBR 13-7(e) nor any other amount paid by, or on behalf of the debtor(s) for services to be rendered in connection with a chapter 13 case, shall be considered to be a “flat fee” if reasonable fees incurred by the attorney for the debtor(s) for services actually rendered prior to or after the filing of the petition do not exceed compensation paid by or on behalf of the debtor(s), (iii) the debtor(s) may be entitled to a refund of some or all fees paid or retainer given under certain circumstances in the event that services rendered are not consistent with the time and labor expended, the novelty and difficulty of the questions involved, and/or the skill requisite to perform the services efficiently and in accordance with applicable rules and law, and (iv) the debtor(s) is entitled to seek review by the Court of the reasonableness of any fees or expenses.

The signatures below reflect that the debtor(s) understands the responsibilities set forth above and that the attorney for the debtor(s) acknowledges responsibility to comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts, including the responsibilities set forth above. By signing below, the parties acknowledge that they have read and understand the foregoing provisions. The debtor(s) additionally acknowledges receiving an executed copy of this form.

Debtor

Date

Joint Debtor

Date

Signature of Attorney for the Debtor(s)

Date

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re

Case No.

Chapter 13

Debtor(s)

**APPLICATION BY ATTORNEY FOR THE DEBTOR(S) FOR COMPENSATION
UNDER 11 U.S.C. § 330(a) AND MLBR APPENDIX 1, RULE 13-7(f)(1)**

[COVER SHEET]

Filing Date: _____

Case No.: _____

Confirmation Date: _____

Debtor: _____

Joint Debtor: _____

Address: _____

Address: _____

Attorney for Debtor(s): _____ BBO# _____

Address: _____

Telephone: _____

Facsimile (fax): _____

The Application for Compensation submitted for approval by: _____
(Attorney for the Debtor(s); Special Counsel to the Debtor(s)).

Prior Application(s) filed (Y/N): _____

If yes, provide date of Order approving: _____

If yes, provide total amount approved: \$ _____

Payments to date: \$ _____

Dates for which compensation is sought (ex. 1/1/2019-6/1/2019):

Fees sought in the sum of: \$ _____

Expenses sought in the sum of: \$ _____

Total Fees and Expenses: \$ _____

You will receive a separate notice which will establish the bar date for filing objections, if any, to the Application for Compensation.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re

Case No.

Chapter 13

Debtor(s)

**APPLICATION BY ATTORNEY FOR THE DEBTOR(S) FOR COMPENSATION
UNDER 11 U.S.C. § 330(a) AND MLBR APPENDIX 1, RULE 13-7(f)(1)**

Now comes _____ as attorney for the debtor(s) (each and together the "Applicant"), and pursuant to 11 U.S.C. § 330(a), Fed. R. Bankr. P. 2016, and MLBR Appendix 1, Rule 13-7(f)(1) respectfully submits the within Application for Compensation seeking approval of compensation in the sum of \$ _____. In support of the application, the Applicant submits the following:

1. On _____, the debtor(s) commenced a chapter 13 proceeding in the United States Bankruptcy Court for the District of Massachusetts.
2. The Applicant attaches hereto as Exhibit 1, in conformance with the provisions of MLBR 2016-1 and MLBR Appendix 1, Rule 13-7, a contemporaneous time record and expense report describing the specific services performed each day by each person.
3. The Applicant has rendered the services described in Exhibit 1 and has actually expended time without compensation except as disclosed in the form entitled "Disclosure of Compensation of Attorney for Debtor" pursuant to 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b) filed with the Bankruptcy Court or in accordance with the provisions of a confirmed chapter 13 Plan.
4. The Applicant requests that compensation be allowed in the sum of [up to \$10,000] for services to date and in the sum of \$ _____ for expenses to date, for a total of \$ _____. Payment shall consist of (i) the funds received as a retainer in the amount of \$ _____ and (ii) the balance [through the confirmed Chapter 13 Plan] [outside of the Plan] on account of the fees sought under this application.
5. The Applicant attaches as Exhibit 2 a brief narrative description of services in support of the compensation requested.

Wherefore, the Applicant prays that this Honorable Court enter an Order allowing the fees and expenses as requested herein in the sum of \$_____ and for such further relief as is appropriate.

Dated:

Respectfully Submitted,

/s/ _____

Printed Name

Address

BBO#

Telephone

Email