

**UNITED STATES BANKRUPTCY ADMINISTRATOR
MIDDLE DISTRICT OF NORTH CAROLINA**

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Consumer Debtors' Bar

Via Email

Re: Employment of Professionals in Chapter 13 and Related Issues

Dear counsel,

This letter provides a guide related to: (1) the employment of professionals by chapter 13 debtors, and (2) when it is necessary the disclose or seek approval of compensation of professionals. It also discusses two common scenarios—selling the debtor's home and settling personal injury claims.

Do chapter 13 debtors need to file employment applications to employ professionals such as attorneys, accountants and brokers?

Answer: No application is required, but you must send written notice to the trustee and BA. Email notice is sufficient.

When your chapter 13 debtor clients need to employ professionals, it is not necessary to file employment applications. Effective January 1, the Court adopted Local Rule 2014-1(c), entitled "Employment and Compensation of Professionals by Chapter 13 Debtors," which provides:

(1) A debtor in a chapter 13 case is not required to file an application to employ a professional. However, the debtor must promptly provide written notice of the professional's employment to the chapter 13 trustee and the bankruptcy administrator.

(2) Obligations Regarding Disclosure and Approval of Compensation. Nothing in subsection (c)(1) alters or limits a professional's obligations to disclose or seek approval of compensation, including, without limitation, the requirements set forth in 11 U.S.C. § 329, Rule 2016 of the

Federal Rules of Bankruptcy Procedure, and any order, including any standing order of the court, as applicable.¹

Is court approval required for a chapter 13 debtor’s professionals to be paid?

Answer: If the source of payment is the bankruptcy estate, court approval is required. This includes payment from sale proceeds. This also includes payment from a litigation settlement, such as a contingent fee or an attorney fee award under a fee-shifting statute, when the litigation claim is property of the estate. However, a standalone application is not necessary, and you may include these requests as a part of the associated sale or settlement motions.

When a professional seeks compensation from the estate, court approval is required. *See* Fed. R. Bank. P. 2016(a) (requiring an application “[i]f an entity seeks from the estate interim or final compensation for services or reimbursement of necessary expenses”); *see also* 11 U.S.C. § 330(a)(4)(B) (“In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor’s attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.”).

¹ This local rule is consistent with the majority view that section 327(a) does not apply to chapter 13 debtors’ employment of professionals. Section 327(a) provides that the “the trustee, with the court’s approval, may employ” professionals. 11 U.S.C. § 327(a) (emphasis added). Numerous courts have held the use of the word “trustee” means that trustees need court approval to employ professionals, but chapter 13 debtors do not. *See In re Jones*, 505 B.R. 229 (Bankr. E.D. Wisc. 2014) (denying chapter 13 trustee’s motion to reconsider order denying debtor’s motion to retain special counsel under section 327 to pursue illegal repossession claim; finding 327 only applies to hiring of counsel by trustee, not debtor; finding special counsel’s compensation is subject to court approval under sections 329 and 330 and special counsel who represents the chapter 13 debtor in connection with the case must file statement of compensation paid or to be paid; not explicitly requiring filing of fee application but only the 329 statement); *In re Gorski*, 519 B.R. 67 (Bankr. S.D.N.Y. 2014) (chapter 13 debtor need not move to hire special counsel under 327(e) but compensation must be disclosed under 329 and post-petition payments from property of the estate must be approved under 330(a)(4)(B)); *In re Rosales*, 621 B.R. 903, 922 n. 83 (Bankr. D. Kan. 2020) (containing a string cite of multiple cases standing for the proposition that chapter 13 debtors are not required to file an application to employ special counsel or obtain court approval); *see also* 3 *Collier on Bankruptcy* ¶ 327.01 (16th ed. 2025) (“Because section 327 addresses the retention of professionals by a trustee, it does not by its terms apply to the retention of professionals by a debtor that is not a debtor in possession. Thus, a debtor in a case under chapter 7 or chapter 13 does not need court approval before retaining counsel.”).

What disclosures are required if a chapter 13 debtor’s attorney receives payment from a source other than the estate?

Answer: Even if the source of payment is not property of the estate, a disclosure of compensation is required by section 329(b) and Rule 2017(b) if services are provided in connection with the bankruptcy case.

Regardless of whether the estate is the payment source, any attorney representing a debtor “in connection with” a bankruptcy case must disclose compensation they have been “paid or agreed to be paid.” 11 U.S.C. § 329(a). This requirement is construed broadly. *See In re Gorski*, 519 B.R. 67, 71-72 (Bankr. S.D.N.Y. 2014) (finding that section 329(a) disclosure requirements applied to domestic counsel). Any services that would objectively have an impact on the bankruptcy case fall within the scope of this provision. *Id.* at 71-72. Thus, when a chapter 13 debtor signs an engagement agreement with a personal injury lawyer to pursue a claim belonging to the bankruptcy estate, a disclosure must be filed. Parties are then free to review and challenge the compensation disclosed. Excessive fees are subject to disgorgement. *See* 11 U.S.C. § 329(b); Fed. R. Bankr. P. 2017(b).

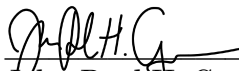
Common Scenario #1: Using a Real Estate Agent to Sell the Debtor’s Residence

When a chapter 13 debtor seeks to sell their home, it is not necessary to file a motion to employ a broker. However, you should email the chapter 13 trustee and the BA to notify them of the employment. When the house goes under contract, the debtor should file a motion to approve the sale. The sale motion should identify the broker and the proposed commission or other compensation. The proposed order should identify and authorize the broker’s payment.

Common Scenario #2: Personal Injury Claims

If a debtor has a personal injury claim, it is not necessary to file a motion to employ personal injury counsel. When the claim is settled, it may be necessary to file a settlement motion. If the personal injury claim has not been claimed as exempt or is only partially exempt, then a settlement motion is required because the litigation claim is property of the estate. The settlement motion and proposed order should identify personal injury counsel and the proposed compensation to be received by counsel. However, if the personal injury claim has been fully exempted, then no settlement motion is required since it does not impact property of the estate. However, even if no motion is required, you should notify the chapter 13 trustee and the BA of the settlement (including compensation to personal injury counsel). A similar analysis would apply to other litigation claims.

As always, thank you for your service to your clients. If you have questions, please feel free to reach out.



John Paul H. Cournoyer
U.S. Bankruptcy Administrator
Middle District of North Carolina

CC: Chapter 13 Trustees