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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In Re: Attorney's Fees in Chapter 13 Cases
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Case No. 06-50001 Chapter 13

**Statement in Support of Increased Presumptive Debtor's Attorneys fees in
Chapter 13 Cases**

Comes Now, David M. Cook, an Attorney licensed to practice law before the federal bankruptcy court in the District of Utah and in support of raising the presumptive Attorney's fees in Chapter 13 cases states as follows:

1. The new code as enacted by Congress has imposed many new requirements and duties upon all attorneys representing Chapter 13 Debtors.
2. I have attached a list of these new requirements and duties as they pertain to Chapter 7 and Chapter 13. Please disregard any reference to Chapter 7 duties for purposes of the Hearing. This list was originally meant for inter-office training and has not been adapted for this matter before the Court. However, it may prove to be useful to see, from an Attorney's perspective, the additional time and requirements that are needed for successfully prosecuting a Chapter 13 plan under the new code.
3. Bankruptcy practice has traditionally been a specialized area of practice requiring much paperwork and attention to detail. Bankruptcy practice requires great knowledge beyond

the typical attorney who practices in the state courts such as detailed knowledge of the federal bankruptcy code, the federal rules of practice as well as the local rules of practice. Bankruptcy has also been an area of practice avoided by many as a minefield laid with traps for the unwary and inexperienced attorney. With the requirement of the new Code, the minefield has become larger with more severe consequences. As a result, I anticipate attorney's fees in the state of Utah for an experienced bankruptcy professional will rise to a minimum of \$200.00 per hour.

4. As of September 27, 2005, our sister state of Arizona was allegedly allowing "no-look" fees of \$3,500 and \$4,500.00 for Chapter 13 cases. However, Counsel has been unable to verify this.
5. For cases filed after October 17, 2005, the Southern District of Indiana has allowed up to 500.00 as a presumptive fee (See the attached guidelines adopted by that court).
6. The Western District of Michigan has adopted a "no-look" fee between \$2,400.00 and \$2,900.00 depending on the CLE or Certification status of the attorney. See paragraph 16 of the attached memorandum.

I support and encourage this court to seriously consider a substantial increase in the presumptive fees awarded in Utah. I believe the fees should be increased to at least that which is recommended by Lee Davis, Justin Burton, and Jory Trease in their Memorandum dated February 6, 2006..

Respectfully submitted on this 23rd day of February, 2006.



David M. Cook
Cook & Enderton, L.L.C.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA**

GUIDELINES FOR PAYMENT OF ATTORNEYS' FEES IN CHAPTER 13 CASES

The following are Guidelines for the circumstances under which the court will, as part of the Chapter 13 plan confirmation process, approve fees of attorneys representing Chapter 13 debtors. These guidelines do not preclude the filing of Motions to Reinstate, in which instance fees would be payable directly to debtor's counsel.

An attorney may decline to seek approval of compensation pursuant to these Guidelines. If an attorney so declines, his or her compensation shall be disclosed, reviewed, and approved in accordance with applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330 and Fed.R.Bankr.P. 2002, 2016 and 2017. This authority requires, at a minimum, that payments on account of post-petition services be held in trust until the court approves the fees and expenses of the attorney.

Alternatively, attorneys may have their fees approved and paid as part of the Chapter 13 plan confirmation process if they comply with the following Guidelines.

1. Counsel may seek approval for fees up to the amounts set forth in Paragraph 2 without filing a detailed application if:

- a) Counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," attached hereto;
- b) No objection to the requested fees has been raised.
- c) A proof of claim has been filed with the Court by the attorney and served upon the trustee.

2. The maximum fee which can be approved through the procedure described in Paragraph 1 is:
* \$3,500.00.

3. If counsel does not wish to obtain approval of fees in accordance with these Guidelines, or if an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" is not filed, or if counsel requests fees in excess of the amounts in Paragraph 2, or if there is an objection, fees will not be automatically approved upon plan confirmation pursuant to these Guidelines. In such cases, counsel must deposit all advance payment of post petition fees in trust, must apply for all fees, and shall comply with 11 U.S.C. § 329 and 330 and Bankruptcy Rules 2002, 2016 and 2017.

4. If counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," but the initial fee is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees.

5. Except for pre-petition retainers, all fees shall be paid through the plan unless otherwise ordered. Absent court authorization, the attorney may not receive fees directly from the debtor other than the pre-petition retainer. After plan confirmation, the Chapter 13 trustee shall pay the attorney until the fee is paid in full.

6. If an attorney has elected to be compensated pursuant to these guidelines but the case is converted or dismissed prior to confirmation of a plan, absent contrary orders, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by the attorney and served upon the trustee.

Under appropriate circumstances, an attorney may file a motion (within 10 days of the dismissal or conversion) for allowance and payment of additional fees. The attorney shall not collect, receive, or demand additional fees from the debtor for work already performed unless authorized by the court, even after dismissal.

7. On its own motion or the motion of any party in interest at any time prior to entry of a final decree, the Court may order a hearing to review any fee paid or to be paid.

Effective for Chapter 13 cases filed on or after October 17, 2005, in the Southern District of Indiana.

**MEMORANDUM REGARDING ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES
FOR COURT-APPOINTED PROFESSIONALS**

AS AMENDED EFFECTIVE JANUARY 1, 2006

Parties in interest have continued to lodge objections to applications for the allowance of compensation and reimbursement of expenses. In an attempt to reduce the number of these objections, the judges of this court have determined that it is in the interests of all debtors, creditors, their respective attorneys, and other parties in interest, including the United States Trustee, that the following general guidelines respecting the context of fee applications be established and published.

1. Professional persons are appointed by the United States Bankruptcy Court for the Western District of Michigan, pursuant to 11 U.S.C. §§ 328 and 330(a)(1) and FED. R. BANKR. P. 2016. The burden of proof regarding all fee applications submitted by court-appointed professionals is imposed upon the applicant.
2. An application must succinctly itemize each activity, the date of the activity, the professional who performed the work, a description of both the nature and substance of the work, and the time expended thereon. Records providing no explanation of activities performed will be deemed inadequate and therefore noncompensable.
3. In order for time spent on activities such as court appearances, preparation for court appearances, conferences, telephone calls, drafting documents, and research to be compensable, the nature and purpose of the activity must be noted. Time entries for telephone calls must list the person with whom the applicant spoke and give a brief description of the conversation. Time entries for correspondence must state the addressee and give a brief explanation of the contents. Time entries involving documents must specify the specific document. Time entries for legal research must describe the matter or proceeding researched, and the general legal issue.
4. Applicants shall not attempt to circumvent minimum time requirements or any detail requirement by "lumping" or "bunching" a number of activities into a single entry. Each type of service must be listed with a corresponding specific time allotted.
5. Time entries with unexplained abbreviations are noncompensable. (Where abbreviations are used, an appendix explaining the abbreviations shall be attached.) Where computer time sheets are submitted to substantiate entries, a code key must be supplied, or the application will not be considered. In more complex petitions, a glossary of persons involved may be helpful.

6. All applications shall state the case filing date, the chapter, whether conversion has occurred, and the date of conversion. The application must state the amount of any retainer paid, as well as the date of each previous application, the amount of compensation and expenses requested, the amount of compensation and expenses approved, the date of approval, and the amount received. The application must also indicate the total hours charged and give a summary of the hours and hourly rate charged by each professional.
7. If more than one professional has charged time for activities such as intra-office conferences or joint court appearances, the applicant must explain the need for each professional's participation in the activity.
8. All time listed must represent the actual time required to perform the activity and should be stated in tenths (.10) of an hour. "Rounding up" of time or minimum time increments of .25 hours is not permitted.
9. The rates charged must be commensurate with the level of skill required for a particular task; for example, attorney rates or paralegal rates may not be charged for nonlegal work, such as copying or delivering documents, preparing or filing proofs of service, or for trustee duties generally performed without the assistance of an attorney. When paralegals are utilized to perform legal services for an estate, they may be compensated as paraprofessionals rather than treated as an overhead expense.
10. No fees shall be allowed for general research on law well known to practitioners in the area of law involved.
11. Reasonable time spent by an attorney in preparing and reviewing an application for compensation may be compensable.
12. The court will consider whether tasks performed within a reasonable number of hours and whether the requested hourly rate is reasonable based upon the customary rate charged by experienced practitioners.
13. The court will not allow compensation for services which do not benefit the debtor's estate; for example, fees for reading the work product of another attorney simply as a matter of interest or performing legal services mainly beneficial to the debtor, or the debtor's principals.
14. An application for reimbursement of expenses must explicitly list each expense, its date incurred/paid, and a description of the nature and purpose of the expense. For example, requests for mileage must include the date, destination, miles, per mile rate, and the reason for the trip. Professionals should utilize the most economical method for necessary expenses; for example, coach air fare moderately priced accommodations, and commercial firm duplication for large numbers of copies. Courier service, express mail service and fax transmissions

should not be used routinely, but, if used, should be as a result of justifiable reasons including time constraints.

15. In chapter 13 cases filed prior to October 17, 2005, the court may approve compensation of a debtor's attorney in an amount not to exceed \$1,800.00 for services rendered through confirmation, without the necessity of filing an itemized statement of services rendered, provided an agreement is filed with the court which sets forth the agreed-upon fee for such pre-confirmation services. This is not an "entitlement;" in simple straightforward consumer cases, an attorney should request less than the \$1,800.00 "no-look" fee. The required agreement shall be executed between the debtor and the debtor's attorney. If services with a reasonable value in excess of \$1,800.00 are performed for which the attorney wishes payment, the attorney shall file an itemized fee application as required herein covering both the initial \$1,800.00 awarded (summarized from the commencement of representation) as well as the additional fees requested. Once reviewed, the court may award fees in excess of \$1,800.00.

- * 16. Due to the additional work required by the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) to shepherd a chapter 13 case through confirmation, and the court's extreme interest in promoting and rewarding attorney education, the court shall implement an experimental one year sliding scale program for the awarding of chapter 13 debtor attorney's fees in chapter 13 cases filed on or after October 17, 2005. Commencing January 1, 2006 and ending December 31, 2006, the court may approve a "no look" fee in an amount not to exceed \$2,400.00 for services rendered through confirmation. Attorneys who have and continue to attend bankruptcy educational seminars during the year immediately prior to the date the chapter 13 was filed and who certify in writing as to the seminar(s) attended, e.g., FBA Bankruptcy Seminar, ABI Central States, etc., and thus have attained chapter 13 expertise, may be awarded a "no look" fee up to \$2,600.00 for services rendered through confirmation. Attorneys who are or become certified by the American Board of Certification ("ABC") may be awarded a "no look" fee up to \$2,900.00. These fees are not "entitlements" as there still may be simple straightforward consumer cases in which the attorney should request and will be awarded less than the "no look" fees referenced here. As indicated in Paragraph 15, attorneys are still required to file with the court a copy of the fee agreement executed between the debtor and the debtor's attorney. If services are performed with a reasonable value in excess of these "no look" fees and are documented by the filing of an itemized fee application covering both the initial "no look" fee awarded and the additional fees requested, upon review, the court may award fees in excess of the "no look" fees here referenced.

17. The court may consider applications for fees and expenses on a notice and opportunity to object basis as authorized by the Local Bankruptcy Rules for the Bankruptcy Court for the Western District of Michigan. The court may, sua sponte and without notice of hearing, or upon the motion of any party in interest

or the United States Trustee after notice and hearing, order that payment of all, or some portion of, allowed interim fees be withheld for a specified period of time. Whenever payment of an applicant's fee has been deferred by the court without a hearing, that applicant may file at any time a motion to rescind or modify deferral. Motions to rescind or modify deferral shall be set for hearing.

18. *Attorneys should keep in mind that in most cases the reasonableness of the work done and the fee charged will depend upon the results attained. A part of the service to be performed by an attorney is to estimate, as to each prospective matter or proceeding, the probability of success, the amount to be realized and the overall benefit to creditors.*

The court will consider applications for allowance of compensation and reimbursement of expenses which comport with the guidelines set forth in this memorandum.


Honorable Jo Ann C. Stevenson
Chief U.S. Bankruptcy Judge


Honorable James D. Gregg
U.S. Bankruptcy Judge


Honorable Jeffrey R. Hughes
U.S. Bankruptcy Judge

**NEW TASKS/REQUIREMENTS UNDER BAPCPA AND THE TIME TO COMPLETE SUCH NEW TASKS
SUBMITTED BY
COOK & ENDERTON, L.L.C.**

Description of New Tasks	Code Section(s)	Chapter	Time
<p><i>Determining "Current Monthly Income" for purposes of the means test.</i> "CMI" is actually an average of income received by the debtor(s) during the six months immediately preceding the filing of the case [101(10A)], so we have had to gather proof of that income. If the Debtor does not file until the following month, I have had to re-calculate the 6 month CMI, the 60 day pay-stub analysis, Schedules I & J and Form 22C. We will also need to file with the Petition copies of payment advices or other evidence of payment received with 60 days of filing, by the debtor from <u>an employer</u>, and a statement of the amount of monthly net income, itemized to show how calculated [521(a)(1)(B)]. We have to gather and keep these documents, and scan them for filing with the Court. I also have to redact all but the last 4 digits of the SS# from all pay-stubs. This has to be done by hand and is very time consuming. (See Rule 1007).</p>	101(10A); 521(a)(1)(B); Rule 1007;	7 and 13	90-120
<p><i>Credit Counseling Certification.</i> Assuming debtor's attorneys are not involved at all in the certification process, other than to refer prospective clients to approved credit counselors, we <u>still</u> need to be familiar with the process and advise our clients regarding this new requirement as well as the Financial Management Course. This new task has required an additional 15 minutes of explanation in the initial and succeeding consultations. It takes me an average of approximately 15 minutes per case in calling or writing to clients regarding these two new requirements. Sometimes, I have to call the Credit Counseling Agency to request that the Certificate be faxed to my office. I have to check the Trustee's website monthly to obtain and format the updated approved list of Agencies. I then have to update our information packet for our clients. This is also time</p>	109(h); 521(b)	7 and 13	20-30

Description of New Tasks	Code Section(s)	Chapter	Time
<p>consuming takes up another hour per month. To do the credit counseling certification analysis and updates will probably take 20-30 minutes as averaged among my clients, and is a <u>new task</u>.</p>			
<p><i>Rare Credit Counseling Certification Tasks (continued).</i> If we are dealing with a Hot File (foreclosure or repossession imminent), and we can not get certification within 5 days, we will need to (1) file with the Petition a <u>certification</u> that we cannot get CCC certification within 5 days; (2) file CCC certification as soon as we get it, but within 30 days. If we can't get the CCC certification within 30 days, we can file a Motion requesting additional 15 days, but we can't get more. [109(h)(3)]. This will rarely be needed, but we don't really know how many cases these requirements will affect, and these are all <u>new tasks</u>. In those cases where they are needed, it may add an additional 30-60 minutes.</p> <p>If debtor is active duty military, and in combat zone, or other circumstances apply, the debtor's attorney may seek to have requirement waiver altogether, upon motion, filed with the Petition, and after a hearing. [109(h)(4)]. Again, drafting the motion, serving it, documenting that the "combat zone" or "other circumstances" exception applies and appearing for the hearing are all <u>new tasks</u>, and may add as much as 60 minutes work to the case.</p>	109(h)	7 and 13	30-60* 60*
<p><i>New Notice Requirements.</i> The notices required under 342(b) (to debtor, of available chapters, services available from consumer credit counseling, etc.), has to be provided by the debtor's attorney, pursuant to 527(a)(1). This adds an average of 10 minutes to the signing while we go over the notice with the debtor. Clients often ask questions about this document. This form has to be signed at the initial consultation and again when the case is filed. Furthermore, this form must be kept in the file and adds to the storage costs.</p>	342; 527(a)(1)	7 and 13	10 5*

Description of New Tasks	Code Section(s)	Chapter	Time
<p>342(c)(1) requires the creation of 2 separate documents when adding a creditor in Chapter 13. The first, sent to the creditor, has to contain the debtor's full SS#, while the one sent to the Court has to be redacted to last 4 digits. This probably won't add much time, but is a <u>new requirement</u>, and if we have to go in and redact the SS# by hand, it will add at least a minute or two. Also, clients will have to sign both forms, and we will have to explain to clients how the two forms are different.</p>			
<p><i>New Notice Requirements (continued).</i></p> <p>Section 342(c)(2) requires us to use a "billing questions" or "correspondence" address from our clients' credit card statements. This section requires us to collect and review the past two months of billing statements and other "correspondence" from our clients' creditors so that we can make sure that the correct address is being listed. Often, this correspondence address is listed in fine print on the back of the bill. This is extremely time consuming and cannot be delegated to the unsophisticated client. We also have to keep these notices so we can document why we used a specific address. This, in turn, will <u>increase storage costs</u> (whether we store electronically or otherwise). This alone has added at least 30 minutes to each case.</p> <p>Under 342(f), creditors can request that all notices to be sent to such creditor nationwide will be sent to a specific address. I would hope the Court will establish database under which we can go on-line and find notice addresses filed under 342(f)(1). Somehow, I don't believe we will be so fortunate. If I am wrong, we would still need to check the database before filing (or at least check the last "update" date). Depending on # of creditors, this might take only a few minutes, or it may take much longer.</p> <p>342 (g)(2) says we can get NO monetary penalty for stay violations unless proper notice address is used. Stay violations will probably increase, particularly among small businesses (small auto dealers, for example), because we will have a harder time getting sanctions, and in filing for sanctions, we will need to include allegations that notice was</p>	342	7 and 13	<p>30</p> <p>10-60</p> <p>15*</p>

Description of New Tasks	Code Section(s)	Chapter	Time
(c) failed to perform the terms of a confirmed plan; and			
<p>Limitation on automatic stay in re-files (continued) 3. There has been a substantial change in the financial or personal affairs of the debtor, and he is likely to get a discharge (Ch. 7), or is likely to perform obligations under and complete a plan (Ch. 13).</p>	362(c)(3), (4); 362(i)	7 and 13	
<p>Additional acts not prohibited by automatic stay. There are a number of additional items which have added to the list of things not covered by the automatic stay. These types of claims/actions will now be more difficult to deal with, and greater care will have to be taken by debtors attorneys in accounting for these items so that the plan will still work in Chapter 13 (add 30 minutes), and so that debtors have a better idea of how to handle these items after a discharged Chapter 7 (add 10 minutes).</p>	362(b)	7 and 13	10-30
<p>Multiple filings affecting real estate. Under (d)(4)(B), creditor can record certain orders granting relief with the Register of Deeds office. In all cases, we need to check the national PACER index and, if the client owns real property, the Register of Deeds office in the County where any real property which would otherwise be affected by the case is located. This adds another 15 minutes as well as PACER cost to research the prior filings or lack thereof and print off the results.</p> <p>The real problem is going to come if the creditor bar sees this as a separate and additional grounds for filing MFRs. This could increase the number of MFRs we are forced to defend. This might add as much as an hour's work to every 1 out of 10 Chapter 13 cases. This will likely only apply in Chapter 13 re-files, because in Chapter 7 cases, if the debtor is not current when they file, there will already be sufficient grounds for the creditor to get relief from the stay.</p>	362(d)	13	15 minimum
<p>Stay Terminates 60 days after MFR. We will need to be more vigilant in the handling of MFRs. Along with our response, we will file a separate motion asking that the stay</p>	362(e)(2)	7 and 13	60*

Description of New Tasks	Code Section(s)	Chapter	Time
<p>remain in effect until a Final Order, by Consent or otherwise, is entered, and we will submit a proposed Order with such motion. This is a <u>new task</u>. How long it will take will probably depend on how much opposition we get. In this District, the Court has not been inclined to grant our motions to continue the stay, and are probably more likely to enter into Consent Agreements. Even if opposing counsel stipulates to extending the automatic stay, an additional 60 minutes is needed for negotiation, drafting and review of any stipulation and order that needs to be filed with the court.</p>			
<p><i>Stay terminates if debtor fails to timely file a "proper" statement of intentions, or to perform stated intentions within 30 days of filing.</i> With respect to vehicles, assuming passing through will not be an option, on a reaffirmation, we can either (1) wait and let the creditor send us the reaffirmation (which might be advisable because of all of the new disclosure requirements under 524(k)); (2) draft a reaff ourselves and send it to the creditor right away; (3) try to negotiate terms with the creditor; or (4) try (where appropriate) to redeem the property. If we offer to reaffirm on the original contract terms, the time limits do not apply (with respect to the lifting of the stay). Otherwise, with respect to offers to reaffirm, we might need to file motions to extend time for performing statements of intentions [see 521(a)(2)(B)] to allow us time to draft/negotiate/file a reaff. In cases of redemption, we might need to file a motion to extend time along with the motion to redeem (asking for separate order extending time to perform).</p>	<p>362(h); 521(a)(2); 521(6)</p>	<p>7</p>	<p>(1) 0 (2) 30 (3) 30-60 (4) 30-60 45</p>
<p><i>Assumption and Rejection of leases.</i> In Chapter 7, debtors must now assume or reject lease. In Chapter 13, "ride through" is no longer an option. In a Chapter 7, then, we will need to verify account status, and if debtor is <u>not</u> current, we will need to write creditor a letter requesting that the debtor be allowed to reaffirm. In both Chapter 7 and 13, we must counsel our clients on the costs and benefits of both options (assumption and rejection), alternate financing and alternate transportation.</p>	<p>365(p)</p>	<p>7 and 13</p>	<p>10 (7) 30 (7/13)</p>

Description of New Tasks	Code Section(s)	Chapter	Time
<p>Reducing Unsecured Claims by 20 Percent. If debtor has proposed alternate payment plan such as a work-out agreement or Consumer Credit Counseling plan, we must investigate reasonableness of any creditor's refusal to accept, because an unreasonable refusal might allow us to reduce creditor's claim by 20 percent. If we think a refusal was unreasonable, we will have to file a motion with the Court to reduce the claim, along with appropriate documentation.</p>	502(k)	13	10-15 60
<p>Determining Dischargability of Taxes. It is increasingly important to obtain a MFTRA-X and/or other documents concerning taxes to determine dischargability. Note, though, that "2 year rule" for filing now applies in Chapter 13, so attorneys will have to work harder to formulate feasible plans in cases where older tax returns have not been filed.</p>	507(a)(8)(A)(ii) (I), (II); 507(a)(8)(G)	7 and 13	25 to gather info.; additional 10 per tax year reviewed.
<p>Determining Priority/Treatment of Domestic Support Obligations. If client has a domestic support obligation being paid to or through a governmental unit, we must determine if it has priority under (a)(1)(A)[has not been assigned], in which case it must be paid in full during the plan; or whether (a)(1)(B) applies [has been assigned], in which case debtor has only to pay to the extent disposable income allows under 5 year plan [or applicable commitment period under 1322(a)(4)]. This is a <u>new task</u>. Additionally, Debtor's attorney must verify the address of all Domestic Support Creditors. A separate matrix must be filed and before discharge is granted, a declaration and proof of being current on child support payments must be filed with the court. These additional obligations will take at least another 60 minutes to fulfill. In each case where there are child support obligations. I estimate that roughly ¼ to 1/3 of my clients owe support obligations. Therefore, I have adjusted the time to 15 to 20 minutes per client.</p>	507(a)	13	15-20
<p>Determining Priority/Treatment of Domestic Support Obligations (continued) which will require us to gather and evaluate the information, and then based on that evaluation, to formulate a plan which complies with the new code requirements regarding DSOs.</p>			

Description of New Tasks	Code Section(s)	Chapter	Time
<p>Additional things debtors' attorneys will need to file with Petition and Schedules. Under 521(a)(1)(B), we have to file: (1) a statement, signed by the attorney, saying we provided client with statements required by 342(b); (2) copies of payment advices or other evidence of payment received with 60 days of filing, by the debtor from <u>an employer</u>; (3) a statement of the amount of monthly net income, itemized to show how calculated; and (4) a statement of anticipated income changes to take place within 12 months.</p> <p><u>*Also, under Rule 1007, in all Chapter 7 and Chapter 13 cases, if the debtor does not pass the means test, you have to file with the Petition a Statement of Current Monthly Income on the officially proscribed form. This form alone has been the subject of CLE classes and much debate and controversy. The US Trustee's Office has taken its own "Position" in unwritten form that Counsel must anticipate and advise the client about.</u></p> <p>Time Limits: Section (I) says, basically, debtor must file all information required by 521(a), including additional information listed above, if required by Court, within 45 days, although paragraph (3) says you can request an additional 45 days. Rule 1007 gives you 15 days on an accelerated case, but allows for a request for an extension**. Also, paragraph (4) says the Trustee can ask the Court, within the 45 days, not to dismiss the case if the debtor attempted in good faith to file the information.</p> <p>Some of this is a repeat of the discussion regarding section 342. above, and some we already do. Time listed is for the items * and **, listed above .</p>	521(a)(1)(B): Rule 1007	7 and 13	*20 See Above
<p><i>Listing Education Individual Retirement Account or Qualified State Tuition Program.</i> The new Code contemplates a special, more in-depth listing of any interest the debtor may have in these types of account not only on schedule E, but Form 22C and the plan.. The amount of additional time it takes to properly inquire and identify and list these</p>	521(c)	7 and 13	10-15

Description of New Tasks	Code Section(s)	Chapter	Time
accounts takes an additional 10 minutes per case because e the client lack sufficient sophistication to understand what these accounts are. I have to inquire in a detailed manner on each and every case.			
<p><i>Providing Copies of Filed or Due Tax Returns to Trustee, Creditors.</i> Under the new Code we are required to serve copies of certain tax returns to the Trustee (always), and to any creditor who <u>requests</u> them. If returns are not sent to Trustee and requesting creditors, the case will be dismissed. Copies must be sent to the Trustee not less than 7 days prior to the date set for the first meeting of creditors, and Rule 4002(b)(4) seems to allow creditors to request return up to 15 days prior to the 341.</p> <p>This is a <u>new task</u>. Not only will we need to help clients track down (in some cases file) returns before filing, but will have to actually serve them on the Trustee. There are additional storage costs, as well, which are not accounted for in the "time" section. Again, I have to redact all names of children or non-filing spouses from all tax documents provided to 3rd parties. I also have to redact all but the last 4 digits of the Debtor's social security numbers. When I do this for the two pages for each state and federal return for 4 years, We are talking about 32 pages that I have to reviewed and redacted. The penalty for improperly disclosing or releasing Social Security Numbers makes me personally responsible. I cannot delegate this requirement to my assistant. Then the returns (if originals) must be mailed to the taxing authorities with a copy to the Trustees. The Certificate must be filed with the Court. This takes a significant amount of time as well as postage and white-out tape. I have already used boxes of white out tape since October 17th.</p>	521(e)	7 and 13	30
<p><i>Providing Copies of Tax Returns Which Come Due and are Filed During Pendency of Case.</i></p> <p>(f)(1) - (3) requires the debtor to file with the Court copies of tax returns and amendments filed during the case. Older returns (for years ending more than 3 years prior to the filing of the case) do not have to be provided. These need to be provided <u>at the same time</u> they</p>	521(f) and (g)	7 and 13	7: 15 13: 20/yr. (More

Description of New Tasks	Code Section(s)	Chapter	Time
are filed with the IRS, but we do not have to file with the Court unless requested by the court, Trustee, or any party in interest.			follow-up)
<p><i>Providing Copies of Tax Returns Which Come Due and are Filed During Pendency of Case (continued).</i></p> <p>(f)(4) says, in a Chapter 13 case, debtor has to provide annual statements, with the FIRST statement to be provided 90 days after "such tax year", or up to 1 year after the commencement of the case, whichever is <u>later</u> (if the case is not confirmed by then), and subsequent STATEMENTS annually within 45 days <u>before</u> the anniversary of the confirmation order.</p> <p>What has to be provided under (f)(4)? Perhaps a spreadsheet. [See (f)(4)(B)]. Definitely a statement of the monthly income, including the amount and sources of income, identity of anyone responsible with the debtor for support of dependants, and the identity of anyone who contributed (any amount) to debtor's household. [See (f)(4)(B) and (g)]. Must show how income, expenditures and monthly income are calculated. [(f)(4)(B)]. How much time it will take (est. 120-180+ for this requirement) will depend on how detailed an accounting is required.</p> <p>Time Limits: 521(j) says, if the debtor fails to file on-going returns (which come due after the filing of the case), IRS can request dismissal, and debtor will have <u>up to</u> 90 days to file or the case <u>shall</u> be converted or dismissed.</p> <p>All of these are <u>new tasks</u> which must be disclosed and explained to Clients..</p>	521(f) and (g)	13	120-180+
<p><i>Determining and Using Appropriate Exemption Law.</i></p> <p><u>Determining</u>: We must gather a lot more additional information before we can even determine which exemptions apply, and will probably use a spreadsheet:</p> <p>How long have you lived in UTAH? (If answer > 730 days, STOP. Use UTAH</p>	522(b)(3)(A)	7 and 13	60-120

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<p>Exemptions. If answer < 730 days). Where were you living 730 days ago? And where did you live for the majority of the 180 days before that? (Use that state's exemptions laws, unless the law of that state says it is available only to citizens of that state, in which case use the federal exemptions. To some extent, this requires we know something about the exemption laws of every state. Also, if debtor did not live in any one state for the majority of the 180 days before the 730 days, use the federal exemptions).</p> <p><u>Using:</u> To the extent that we have to actually use exemptions from another state, or have to use the federal exemptions, we are going to have to spend a lot more time learning those exemptions, and creating appropriate forms to reflect and claim them. Because the "look back" period is so long, this will likely be a problem in more case than might initially be imagined, especially in locations where there is a large military population (e.g., Fayetteville, Jacksonville, etc.).</p>			
<p><i>Federal Exemption of Certain Retirement Funds.</i> We already ask questions about various retirement accounts clients have. However, we need to elevate our inquiry and get specific documentation on what type of accounts they have as well as the amount of interest income over the past 1 year for purposes of Statement of Financial Affairs as well as over the last 6 months for purposes of Form 22C. Some of the time is contemplated in "Determining and Using Appropriate Exemption Law", but if a client has a retirement fund, we won't need to review under these sections. "Time" estimates contemplate additional work associated with this particular type of review.</p> <p>Funds which have received a favorable determination under Section 7805 of the IRC, if that determination is still in effect as of filing, are EXEMPT (no apparent limit).</p>	522(b)(3)(C); 522(b)(4)	7 and 13	20

Description of New Tasks	Code Section(s)	Chapter	Time
<p>Funds which have not received a favorable determination may still be EXEMPT if no prior determination made by court or IRC that funds are not exempt, and either (1) the fund is in substantial compliance with requirements of IRC; or (2) funds are not in substantial compliance, but the debtor is not materially responsible for that failure.</p>			
<p><i>Federal Exemption of Certain Retirement Funds (continuing).</i> Transfers from qualifying accounts under 401(a)(3) of the IRC don't lose their exempt status.</p> <p>Distributions qualifying as an "eligible rollover distribution" as defined in 402(c) don't lose their exempt status. To qualify, distribution from qualifying account, and deposited into another not later than 60 days after distribution.</p>			
<p><i>Ten Year Look Back Period for Real Property Transfers.</i> I must now pay much more attention to transfers, made by debtors within 10 years of the filing regarding real property. Under this section, the value of the <u>debtor's interest</u> in the property is reduced to the extent the debtor made a down-payment from non-exempt funds, although this will not affect the value of the debtor's exemption. The section was enacted to combat exemption abuse, when debtors use non-exempt funds to purchase homes in states with unlimited homesteads, but it could affect clients in Utah, as well. (Furthermore, to the extent we have to use another state's exemptions, this could well come to play in UT). To properly evaluate potential issues raised by this section, and the possible exemption problems it might cause, I need to get information on any transfers, the amounts of down-payments (and other large payments), the source of any such payments, etc. Because the "look back" period is 10 years, the likelihood that these issues will arise seems greatly increased, especially with respect to military debtors.</p>	522(o)	7 and 13	30-60
<p><i>Limitations on Homestead Exemptions (outside of Utah).</i> (p): If debtor has purchased residence or burial plot within 1215 days of filing, (and</p>	522(p) and (q)	7 and 13	15-20 if applicable

Description of New Tasks	Code Section(s)	Chapter	Time
<p>assuming you can use exemptions from another state), cannot exempt more than \$125,000, unless rollover from 1 residence to another in <u>same state</u>.</p>			
<p><i>Limitations on Homestead Exemptions (outside of Utah) (continued).</i> (q): Limits residential exemption to \$125,000, even if purchased more than 1215 days ago, if client convicted of certain crimes.</p> <p>As with 522(o), because the “look back” period is so long, the likelihood that these issues will arise seems greatly increased, especially with respect to military debtors.</p>			
<p><i>Changes/Additions to list of Nondischargeable Debts:</i> Luxury Goods: presumption drops from \$1,225 to \$500, and time frame increases from 60 days to 90 days. Cash advances: presumption drops from \$1,225 to \$750, and time frame increases from 60 to 70 days.</p> <p>Domestic Support Obligation [(a)(5)] now encompasses alimony, support, etc.</p> <p>Student Loan non-dischargeability now applies to qualified student loan issued by non-government and for profit institution.</p> <p>Credit cards used to pay non-federal taxes are now non-dischargeable, if a federal tax of that type would have been non-dischargeable. (14A)</p> <p>Fines or penalties incurred under federal election law are now non-dischargeable in Chapter 7. (14B)</p> <p>Property settlements, etc., are now non-dischargeable in Ch. 7. (15)</p> <p>Homeowners dues continue to be non-dischargeable for as long as the debtor has a legal, equitable or possessory ownership interests in the property (Chapter 7). (16)</p>	523(a); 1328(a)	7 and 13	60

Description of New Tasks	Code Section(s)	Chapter	Time
<p><i>Changes/Additions to list of Non-dischargeable Debts (continued).</i> Certain retirement loans (Chapter 7) are now non-dischargeable (18).</p> <p>The super-discharge now does not apply to priority taxes (assuming no fraud or willful evasion)[507(a)(8)(C), 523(a)(1)(B) and (C)]; money, etc., obtained by fraud [523(a)(2)]; unlisted debts [523(a)(3)]; for fraud, etc., in a fiduciary capacity [523(a)(4)]; domestic support obligations [523(a)(5)]; student loans [523(a)(8)]; or for death or PI caused by motor vehicle, vessel or aircraft under DWI [523(a)(9)].</p> <p>In particular, the lowering of the presumption amounts, and the applicable time frame, for “luxury goods” and “cash advances”, will mean more non-dischargeability actions in Chapter 7 cases. The gutting of the “super-discharge” will likewise mean many more non-dischargeability actions in Chapter 13. These would be better handled by an <i>ala carte</i> fee structure that this court has not heretofore recognized. This Court may consider allowing us to cover this additional time by charging more in all cases. This will not be an issue in every case, but, at least in the short-term, I would expect a non-dischargeability action in 1 out of every 15 Chapter 13cases.</p>			
<p><i>Reaffirmation Agreements, including new disclosure requirements.</i> There are substantial new disclosure requirements with respect to reaffirmation agreements. The new required disclosures are set forth under 524(k). We need to gather information at the interview and afterwards about debts we will probably have to reaffirm on, and then we need to discuss with clients the effects and consequences of each proposed reaffirmation. It probably take 30-45 minutes per client.</p>	524(c) and (k)	7	60-75

Description of New Tasks	Code Section(s)	Chapter	Time
<p><i>Reaffirmation Agreements, including new disclosure requirements (continued).</i> Because we are unable, in most cases, to address some of the required disclosures, we will likely have to wait for the creditors to send us the proposed reaffirmations. Schedules I and J need to be filed with the reaffs.</p> <p>Also note that the attorney certification requires the attorney to certify that "this agreement does not impose an undue hardship on the debtor . . ." Subsection (m) says that undue hardship will be presumed if the debtor's budget does not show that they can make the payments. As a result, debtors' attorneys may be unable <u>ever</u> to sign a reaffirmation, which will mean a reaffirmation hearing in every case, which we will likely have to attend, anyway, adding another 30 minutes (including wait time) to every case).</p>			
<p><i>Restrictions and Requirements Regarding Debt Relief Agencies (Debtors' Attorneys).</i> These sections together put more responsibilities on, and require more paperwork from, debtors' attorneys, under penalty of refunding fees and/or paying actual damages. Some of the stuff we do anyway (advising clients of benefits and costs of bankruptcy, 526); some we do not (providing potential clients with "contract" within 5 days of initial providing of services). Also, section 526 seems to require a more thorough background check as to information provided by clients.</p>	526, 527 and 528	7 and 13	15-60
<p><i>Increase in "look back" period for conveyance to a self-settled trust.</i> Subsection (e)(1) allows the Trustee to avoid transfers by the debtor to a self-settled trust within <u>10 years</u> of the filing. Requirements for avoidance:</p> <ul style="list-style-type: none"> (1) to a self-settled trust or similar device; (2) transfer made by debtor; (3) debtor is beneficiary; (4) debtor made transfer with <u>actual intent</u> to hinder, delay or defraud a present or future creditor. 	548(e)(1)	7 and 13	15

Description of New Tasks	Code Section(s)	Chapter	Time
<p><i>Means Testing and Substantial Abuse.</i> "Current Monthly Income" is now a six month average, and "expenses" are determined in part based on IRS national and local standards. Means test used in Chapter 7 to determine eligibility, and in Chapter 13 to determine amounts to be paid into plan. This will have to be done in every case, and because it is based on so much information which is external to the debtor's actual circumstances, and further because consequences of messing up the test are fairly severe, this takes a lot of additional time.</p>	707(b)	7 and 13	90
<p><i>Additional Grounds for Conversion or Dismissal.</i> Court may convert or dismiss a case, or refuse to confirm plan, if the debtor fails either to pay post-Petition domestic support obligation, or to file pre-Petition tax returns (for 4 year period ending on date of filing of Petition). Primarily, the <u>additional time for additional tasks</u> under this section will involve helping the debtor to track and keep records of payments to the DSOs, and defending MTDs based on non-payment of DSOs.</p>	1307; 1308; 1325(a)(8); 1325(a)(9)	13	5-20
<p><i>No cramdown of "recent" purchases.</i> Can't cram-down vehicles purchased within 910 days of filing (2 years, 5 months, 28 days), or other property purchased with 1 year of filing unless not objected to by the Creditor. The risks and explanations to the client must be explained in every case and typically adds 10 to 15 minutes to my consultation. I also have to get more information on when vehicles are purchased, review actual agreements and calculate the look-back period in all cases.</p>	1325(a)	13	10-15
<p><i>Calculation of amount due to unsecured creditors under plan.</i> First step: Did debtor pass or fail the median income test? If the debtor <u>passed</u>, it looks like we can calculate plan as we presently do.</p>	1325(b)	13	30-45

Description of New Tasks	Code Section(s)	Chapter	Time
<p>If the debtor failed: "Disposable income" is <u>now</u> defined as CMI <i>minus</i> expenses allowed under 707(b). Also note that, under 1325(b)(2), we may be able to deduct from the starting figure of CMI additional amounts received for child support, foster care payments, etc. So, we take the "net" monthly income as determined when we did the means test (minus any extra amount for child support, foster care, etc., received), and multiply that by 60. That amount equals the amount that has to be paid into the plan for the benefit of the unsecured creditors. That will give me a "base" amount for unsecured creditors. If this amount is less than priority claims which must be paid in full, increase this amount to the amount of those priority claims (including our fees and administrative expenses). Then, to calculate the plan, we will have to add in amounts that actually will be paid through the plan to those secured creditors which are being paid through the plan. Then, finally, we will look at the debtor's "real" net monthly income, and determine over what period of time the debtor wants to pay into the plan. The debtor cannot pay over a longer period than 5 years, nor less than 3 years (unless he pays the unsecured claims 100 percent).</p>			
<p><i>Requirement of certification of current status on DSOs.</i> Clients need to remain current on DSOs, and have to file certification that they are current before they can get a discharge. Attorneys will need to stress to clients the need to remain current from the initial interview forward.</p> <p>Knowing most clients will forget, and in order to avoid a flood of MTDs at the end of the cases, debtor's attorneys will likely need to monitor 6 month budget reviews for information regarding DSO payments, and when a client is getting close to discharge, send them a letter and a certification. We will then need to get it back and file with the Court</p>	1328(a)	13	15-60