

**JOHN T. EVANS**

A Professional Corporation

*Attorney at Law*

333 East 400 South, Suite 100  
Salt Lake City, Utah 84111  
(801) 521-6661 Fax (801) 521-6663

February 24, 2006

To: Clerk of United States Bankruptcy Court  
District of Utah

The following is being submitted pursuant to the Court's invitation to comment on presumptive attorney's fees in Chapter 13 cases, as follows:

The model fee application attached as an exhibit appears to reflect a minimum fee that would be required under post-BAPCPA diligence and work product requirements. Even in a simple case, the same steps outlined would usually have to be taken. The model provides for little time in researching legal issues which arise regularly in many cases, consuming an inordinate amount of time to interpret and comply with the new bankruptcy laws.

The increased fee that the model proposes seems modest in light of the inadequate prior fee structure which did not fully compensate attorneys for work performed. The prior fee structure allowed up to \$2,000 per case if everything was perfect. But that was the exception rather than the rule. It would not be unusual for a case that was dismissed prior to confirmation to have taken more time and preparation in an attempt to salvage than a case that sailed through the consent calendar with fewer issues or complications, or with clients who were more organized and had better follow-through. Yet for some reason, on the difficult cases the court seems to want to jettison the lode star approach to fees and penalize an attorney for what may have been a heroic effort to help a client and save a case.

In the past, the court would grudgingly award \$900-\$1,200 fees for a case dismissed prior to confirmation. This is not any more than what the court is now routinely granting creditor's attorneys for filing a single Motion for Relief from Stay. I have never seen the Court ask those attorneys to justify that high an award, but I feel certain that the amount of time and effort involved would come nowhere close to that required by debtor's attorneys in filing a Chapter 13 case and preparing it for confirmation.

In the event the court determines to return to a consent confirmation calendar, debtor's attorneys should not be penalized for appearing on the contested calendar as was done under the prior fee structure. The prior fee structure discouraged effective representation of clients. It allowed the Trustee to make demands under threat of losing \$400 attorneys fees if not met. Sometimes those demands were not part of a 341 directive and were made last minute with little or no time to comply and still be approved by consent. This made it very difficult, particularly with those judges who would not allow cases to go by consent on the day of the hearing. If

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debtors attorneys are required to attend a confirmation hearing, they should be compensated for the time instead of penalized, unless the cause appears to be the attorney's neglect. Usually, however, the cause is the client's neglect. If a client is behind on his payments or has failed to furnish a required document, this should not be grounds to penalize the attorney.

Respectfully submitted,

John T. Evans

JTE/csj

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*Attorney at Law*

333 East 400 South, Suite 106  
Salt Lake City, Utah 84111  
(801) 521-6661 Fax: (801) 521-6663

February 24, 2006

The Honorable Glen E. Clark  
The Honorable Judith A. Boulden  
The Honorable William T. Thurman  
United States Bankruptcy Court  
350 South Main Street  
Salt Lake City, UT 84101

**RE: EN BANC HEARING ON CHAPTER 13 ATTORNEYS' FEES UNDER BAPCPA**

Dear Judges:

I submit this letter separately to voice my support for the proposal submitted to the Court by Msrs. Berry, Davis, Trease, and Burton. I also join with Mr. Evans in his letter and fee application submitted on behalf of our office. Since the effective date of BAPCPA, we have witnessed a significant economic effect upon our practice and the practice of our colleagues throughout the Wasatch Front.

The attached fee application does not correspond to any one BAPCPA case actually filed by our office. Instead, it represents what I believe to be the minimum work required on a Chapter 13 case under the new Code. As the Court is no doubt aware, no two Chapter 13 cases are alike; as a result, I do not believe that any one fee application can be completely representative of all Chapter 13 cases, and do not believe--especially under BAPCPA--that there is a "basic" Chapter 13 case. This fee application is meant as a guideline or checklist for our office. We have calculated our average time and labor costs for the tasks required in a Chapter 13 case under the new Code through confirmation and the claims review process.

However, additional issues and labor costs arise in every case as the preparation and filing process moves forward. The numbers suggest that the current fee schedule of \$1,600.00 to \$2,000.00 for attorneys fees is not adequate for the work that goes into cases under the new Code; they also suggest that the proposed \$2,750.00 may in fact be a low estimate for new Chapter 13 cases--especially where issues such as extending the Automatic Stay are involved, a situation becoming more common. I therefore also support the suggestion raised in Mr. Trease's comment, in which he suggests consideration of these presumptive fees separately from fees incurred through additional post-confirmation and post-claims review work.

As Mr. Trease opines, we as Debtors' Counsel can no longer afford to overlook compensation for the myriad of post-confirmation services we perform for our clients. I would join in his suggestion of an *ex parte* menu-driven post-confirmation fee award process. It would certainly alleviate the number of Fee Application hearings my office anticipates filing post-BAPCPA, which

**RE: YOUR TRUSTEE'S MEETING**

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saves time for all parties involved: the Court, the U.S. and Chapter 13 Trustees, Counsel, and the Debtor(s).

I appreciate the time and attention that you are giving this issue. I also appreciate the opportunity you are giving us to voice our opinions as Debtors' Counsel, to make you aware of the factors that impact our practice and continued effective representation of our clients. Debtors in this jurisdiction deserve quality representation; it is my position that with increased presumptive fees and an equitable method of collecting fees for post-petition services, our office can maintain--or even improve--the quality of representation our clients receive.

Respectfully submitted,

Jaren K. Rencher

**EXHIBIT A**

| <u>Date</u> | <u>Description</u>   | <u>Hours</u> | <u>By</u> |
|-------------|--|--------------|-----------|
|             | Initial conference with client, including but not limited to:<br>Preparation of initial Means Test<br>Determination of Eligibility under BAPCPA criteria<br>Research of PACER re prior cases<br>Review of income and expenses for Plan feasibility<br>Calculation of estimated Plan payments<br>Determination of Automatic Stay status in new case<br>Research of case particulars under new law<br>Review residency status to determine exemption ramifications<br>Discussion with client of Notices to Prospective Client and obtain signature<br>Discuss credit counseling requirement and give client list of agencies   | 1.50         | JTE       |
|             | Review and explanation of retainer agreement<br>Review and explanation of packet of info needed to prepare case<br>Preparation of invoice and receipt - initial retainer fee   | .50          | P         |
|             | Conference with client to review information requested from client for preparation of case, including but not limited to:<br>Review of vehicle registration(s)<br>Review of auto insurance bills - compare to budget<br>Preparation of NADA vehicle evaluation for each car<br>Review of charitable contributions statement and annualize for budget<br>Review of real property notice<br>Review of secured loan documents<br>Review of divorce decree<br>Review of credit report<br>Review of credit counseling certificate<br>Verification of residency status and exemption determination<br>Review of driver's license and social security card<br>Review of all creditor information for completeness & accuracy<br>Review of profit & loss for self-employed debtors<br>Review of 401k accounts, contributions & loans<br>Review of 3 months' statements for proper creditor addresses | 2.00         | P         |

|  |      |     |
|--|------|-----|
| Review of last 4 years tax returns   |      |     |
| Calculation of median income & means test  |      |     |
| Calculation of Plan payments   |      |     |
| Preparation of list of missing/incomplete information for client to obtain   |      |     |
| Preparation of detailed case notes and specific case issues  |      |     |
| Calculation of average paystubs & preparation of formal paystub analysis for Trustee's packet  | .50  | P   |
| Consultation with paralegal re case issues as disclosed at client conference to obtain and review info for case prep                 | .50  | JTE |
| Preparation, completion and organization of file/document prep prior to submission to input staff                                    | 1.00 | P   |
| Preparation of Petition, Statements & Schedules and Plan<br>Preparation of Liquidation Analysis<br>Organization and Labeling of File | 3.00 | P   |
| Preparation of Declaration of Filed Tax Returns  | .20  | P   |
| Preparation of Packet for Client to receive Personal Financial Management Course (instructions, list, form)                          | .20  | P   |
| Preparation of Paystub Exhibit for Court   | .20  | P   |
| Preparation of list of missing information still needed given to client for follow-up  | .20  | P   |
| Preparation of Trustee's packet of info needed prior to 341  | .30  | P   |
| Memo prepared with all case notes re prep of file  | .20  | P   |

|   |      |     |
|---|------|-----|
| Review of case file and supporting documents  | 1.00 | JKR |
| Revisions to case per attorney instructions   | .30  | P   |
| Meeting with client to review final prepared case before filing                                   | .50  | JTE |
| Client, attorney & tax entity copies made of case; file original with court                       | .30  | P   |
| Letter to client with file-marked copies of Statements and Schedules                              | .20  | P   |
| File Paystub Exhibit with Court   | .20  | P   |
| File Declaration of Filed Tax Returns with Court  | .20  | P   |
| Entry of 341 Notice into firm calendars and letter to client regarding First Meeting of Creditors | .30  | P   |
| Review file, preparation for and attendance at 341 hearing  | 1.30 | JKR |
| Follow-up letter to client re 341 issues  | .50  | JKR |
| Disposition of post-341 issues/amendments/info requested  | .50  | P   |
| Docket check pre-confirmation to determine if Trustee has filed an objection to confirmation      | .20  | P   |
| Follow-up/phone calls/letters re Trustee's confirmation issues                                    | .50  | P   |

|   |      |     |
|---|------|-----|
| Pre-confirmation document preparation, amendments   | .50  | P   |
| Call(s) to client re issues and attendance reminder or that attendance not required at confirmation                           | .20  | P   |
| Preparation for and attendance at confirmation hearing  | 1.30 | JKR |
| Post-confirmation letter to client  | .30  | P   |
| Post-confirmation follow-up as ordered; budgets, documents  | .50  | P   |
| Review of claims after bar date to determine filing status by secured creditors   | .20  | P   |
| Prepare and file necessary claims for secured creditors and student loans   | .30  | P   |
| Review of claims after governmental bar date to determine feasibility; re-calculate Plan; update claims addresses in database | 1.00 | P   |
| Claims problems resolution including calls to/from client and Trustee   | .50  | P   |
| Prepare Declaration of Claims Review  | .50  | P   |
| Preparation of Objections, Order Pursuant to Objections, set hearing  | .60  | P   |
| Review of objection(s) and file with Court ECF  | .60  | JKR |

|                                  |             |     |
|----------------------------------|-------------|-----|
| Preparation of Motion to Modify  | .50         | P   |
| Review and sign Motion to Modify | .30         | JKR |
| <b>TOTAL</b>                     | <b>23.6</b> |     |

**SUMMARY**

Compensation:

|   |           |                 |
|---|-----------|-----------------|
| Attorney's time <u>2.5</u> hrs. @ \$220hr. =  | \$        | 550.00          |
| Attorney's time <u>5.0</u> hrs. @ \$200r. =   | \$        | 1,000.00        |
| Paralegal time <u>16.1</u> hrs. @ \$ 75/hr. = | \$        | <u>1,207.50</u> |
| <b>TOTAL COMPENSATION</b>                     | <b>\$</b> | <b>2,757.50</b> |