



Case Law

For over two decades, courts throughout the country have recognized the ability of attorneys to split their cases and be paid post-petition for post-petition work. It has (quite literally) become “hornbook law” that a “debtor’s attorney may be compensated for postpetition services from debtor’s postpetition earnings.” *Collier Consumer Bankruptcy Guide* § 5.03[5][b]. “A trend is to divide the services into pre-petition services and post-petition services and execute a separate agreement for each.” *Ginsberg & Martin on Bankruptcy* § 4.05[E]. In fact, our research has found only one court that disapproves of this practice.¹

Walton v. Clark & Washington, P.C., 469 B.R. 383, 386-87 (Bankr. M.D. Fla. 2012)

“[T]here is no prohibition against a debtor making postpetition installment payments for postpetition services.”

“The Supreme Court has also recognized that a debtor is free to use postpetition funds to pay for postpetition legal services. [Citing *Lamie v. Trustee*, 540 U.S. 526, 535-36, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004).] Put another way, there is nothing inherently wrong with a lawyer giving terms to clients for the payment of legal services.”

In re Mansfield, 394 B.R. 783, 792-93 (Bankr. E.D. Pa. 2008)

“Viewed thusly, a client's debt for postpetition services is a postpetition debt which is not subject to the automatic stay or the Chapter 7 discharge injunction [...]. The key to recovery for postpetition services, therefore, lies in the terms of the attorney's fee agreement. The fee agreement must segregate the fee(s) for prepetition work from the fee(s) for postpetition work. Once again, this distinction is necessary because a fee for prepetition work constitutes a prepetition debt of, or claim against, the estate which is dischargeable, whereas a fee for postpetition work constitutes a postpetition debt of, or claim against, the debtor which is nondischargeable.”

Betha v. Robert J. Adams & Assocs., 352 F.3d 1125, 1128 (7th Cir. 2003), cert. denied, 158 L. Ed. 2d 733, 124 S. Ct. 2176 (2004)

“[T]hose who cannot prepay in full can tender a smaller retainer for prepetition work and later hire and pay counsel once the proceeding begins.”

In re Lawson, 437 B.R. 609, 674 (Bankr. E.D. Tenn. 2010)

“[I]n order to be a true ‘straddle’ fee arrangement bifurcating pre- and post-petition services, the contract must clearly identify the services to be included within the pre-petition fee and the services to be included within the post-petition fee.”

¹ See, *In re Jackson* 14-11415 (Bankr. W.D. Louis. 2014) and *In re Green* 14-11458 (Bankr. W.D. Louis. 2014), both involving the same attorney.



Case Law, (cont'd)

In re Sanchez, 241 F.3d 1148, 1150-51 (9th Cir. 2001)

“There is no question after [(In re Hines), 147 F.3d 1185 (9th Cir. 1998)] that a reasonable fee for post-petition services is not a dischargeable debt and may be collected on in the course of the bankruptcy without violating the automatic stay.”

In re Griffin, 313 B.R. 757, 769-70 (Bankr. N.D. Ill. 2004)

“[A] potential solution [...] would be for the debtor and the bankruptcy attorney to enter into a pre-petition retention contract requiring the attorney to perform either no post-petition services or very limited ones not including redemption work; then these parties could potentially enter into a post-petition contract for post-petition services the attorney has not already agreed to perform, creating a new post-petition claim. The trick here is that the post-petition contract must really be a post-petition contract. That is, the legally operative events--the offer, acceptance, and exchange of consideration (either a promise to pay or an act of payment in exchange for a promise to render services)--must in fact occur after the date of the Chapter 7 filing to qualify as a claim arising post-petition and falling outside the scope of § 362(a)(6).”

In re Slabbinck, 482 B.R. 576, 586, 597-98 (Bankr. E.D. Mich. 2012)

“[T]he Court understands that some individual debtors simply cannot afford to pay up front for all of the services required to both file and complete a Chapter 7 case prior to the time that they file their Chapter 7 bankruptcy case. The law does not prohibit such individuals from paying a smaller fee to an attorney to get their case filed and then, once the case is filed, either proceeding pro se or entering into a new agreement either with the same attorney or with another attorney to represent them in completion of their case, with the payment for any postpetition legal services to be paid out of such individual's future earnings.”

“[L]egal fees which are segregated from prepetition legal fees and incurred for postpetition legal services constitute a postpetition debt and are, therefore, an obligation of the Chapter 7 debtor (as opposed to the estate) which he or she has an obligation to pay out of his or her postpetition earnings or exempt assets.”

Gordon v. Hines (In re Hines), 147 F.3d 1185, 1190-91 (9th Cir. 1998)

“[A]ttorneys for Chapter 7 debtors must have a legally enforceable right for their postpetition services [...]”

“[A]ll claims for lawyers' compensation stemming from such postpetition services actually provided to the debtor really do not fall within the automatic stay provisions of Section 362(a)(6) or the discharge provisions of Section 727.”