

### LOCAL RULE 2016-3

#### Bifurcation of Individual Debtor Counsel Fees in Chapter 7 Cases

The payment in full of attorneys' fees to Chapter 7 individual debtor counsel who provide the basic services specified in Local Bankruptcy Rule 2017-1 may create a financial burden for some debtors. To provide debtors seeking such relief access to the broadest range of potential counsel, the court adopts this local rule for pre-petition and post-petition bifurcation of payment of the Chapter 7 individual debtor attorneys' fees as provided herein.

To provide a transparent procedure for an attorney and an individual debtor agreeing to a bifurcated Chapter 7 fee agreement as permitted by *Gordon v. Hines (In re Hines)*, 147 F. 3d 1185 (9<sup>th</sup> Cir. 1998), the following are required for any such agreement:

- A) The agreement shall expressly state the attorneys' fees which are to be paid for pre-petition and post-petition services;
- B) Any obligation for costs advanced relating to the filing of the bankruptcy case shall not be included in the post-petition obligation; and
- C) The *Disclosure of Compensation of Attorney for Debtor* (Form 2030) shall state whether there is a bifurcation of attorneys' fees and specifically identify the dollar amounts attributed to pre-petition and post-petition services.
- D) The Chapter 7 Trustee shall review the *Disclosure of Compensation of Attorney for Debtor* and confirm with counsel and the debtor: (1) that the attorneys' fees for the pre-petition services were paid pre-petition; and (2) if not, counsel shall confirm that he or she will not attempt to obtain payment for the unpaid attorney's fees for pre-petition services.
- E) It shall be deemed presumptively reasonable to charge one-third of the total attorneys' fees pre-petition for pre-petition services.
  - 1. This presumption is rebuttable by any party in interest who may move to address the terms of the bifurcated fee agreement and the allocation of fees for the pre-petition and post-petition services.<sup>1</sup>
  - 2. No more than fourteen days after the petition date, counsel for an individual debtor may request a post-petition order allowing for a greater percentage of the attorneys' fees for basic services provided under Local Bankruptcy Rule to be allocated to post-petition services.
- F) The bifurcation of the payment of attorney's fees, and a default in post-petition payment thereof, does not relieve the attorney of professional duties and obligations to the client, including without limitation, continuing to represent the client unless withdrawal is authorized by the court and to provide basic services required by Local Bankruptcy Rule 2017-1(a). Additionally, the bifurcation of attorneys' fees does not alter the duties and certifications arising under Federal Rule of Bankruptcy Procedure 9011 and the obligations of the attorney admitted to practice in the United States District Court for the Eastern District of California.

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<sup>1</sup> This is without limitation of the court's authority under 11 U.S.C. § 329.