

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

In Re:	)	
	)	
(Third) Western Division Administrative	)	
Order Regarding (I) Attorney's Fees Under	)	Administrative Order No. 22-04
§ 4.3 of the Local Form Plan, and (II) the	)	(Western Division Only)
Sequence of Payments Under Part 7 of the	)	
Local Form Plan	)	

**(THIRD) WESTERN DIVISION ADMINISTRATIVE ORDER REGARDING (I)
ATTORNEY'S FEES UNDER § 4.3 OF THE LOCAL FORM PLAN AND (II) THE
SEQUENCE OF PAYMENTS UNDER PART 7 OF THE LOCAL FORM PLAN**

(A) **Applicability.** This administrative order ("AO 22-04") applies in all chapter 13 bankruptcy cases (each, a "Chapter 13 Case") filed in the Western Division (the "Western Division") of the United States Bankruptcy Court for the Northern District of Alabama (the "District") on or after October 1, 2022 (the "Effective Date"). Additionally, from and after the Effective Date, AO 22-04 shall apply in any Western Division Chapter 13 Case in which the Debtor(s) file a chapter 13 plan or amended chapter 13 plan (each, a "Plan") prior to confirmation. In the event a Chapter 13 Case is transferred from the Western Division to another division within the District (or to another district) prior to confirmation, AO 22-04 shall cease to apply in the Chapter 13 Case.

(B) **Authority.** AO 22-04 is authorized by Rule 9029 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rules 1001-1 and 3015-1. (*See also* Local Form Plan¹ § 4.3 and pt. 7.)

(C) **Prior Administrative Orders Superseded and Replaced.** If AO 22-04 is made applicable in a Western Division Chapter 13 Case by part A hereof, then AO 22-04 supersedes and replaces any other administrative order regarding § 4.3 or part 7 of the Local Form Plan (including, without limitation, Western Division Administrative Order 20-03).

(D) **Payment of Compensation Under § 4.3 of the Local Form Plan.**

(1) **Attorney Compensation in Chapter 13 Cases.** Whether allowed by the order confirming the Debtor(s)' Plan or by separate order, the term "Compensation" (as used herein) refers to compensation awarded the Debtor(s)' bankruptcy counsel in a Chapter 13 Case

¹ As used herein, the term "Local Form Plan" refers to the local form chapter 13 plan adopted by the District in accordance with Bankruptcy Rule 3015.1. (*See* Local Rule 3015-1.) Citations to the Local Form Plan are provided for illustrative purposes and refer to the version of the Local Form Plan in effect as of the date hereof.

(“Bankruptcy Counsel”)² that is to be paid from disbursements by the Trustee³ under § 4.3 of the Debtor(s)’ confirmed Plan (if any).⁴

(2) Requirements for Completing § 4.3 of the Local Form Plan. If AO 22-04 applies, the Plan *may not* select the option to pay Compensation “in accordance with any applicable administrative order regarding fees entered in the division where the case is pending.” Instead, the Plan *must* specify the Compensation that is to be paid at confirmation to Bankruptcy Counsel (the “Fee at Confirmation”), if any, and, if the Fee at Confirmation will not pay the Compensation allowed Bankruptcy Counsel in full, the Plan *must* provide for Monthly Fixed Payments⁵ to be made to Bankruptcy Counsel on the unpaid balance of the Compensation (collectively with the Fee at Confirmation, the “Plan Compensation Payments”). A Plan may provide for the Monthly Fixed Payments to Bankruptcy Counsel to vary over the term of the Plan, provided the Plan specifies the date that the amount of the Monthly Fixed Payments to Bankruptcy Counsel will adjust. Unless the Plan provides otherwise, Monthly Fixed Payments under § 4.3 of a Plan shall commence upon confirmation of the Plan.

(3) “AO 22-04 Available Funds” Fee at Confirmation. The Plan may provide that the Fee at Confirmation shall be the “AO 22-04 Available Funds.” If the Plan so provides, and so long as the operative regular Plan payment amount remains sufficient to fully fund the Plan (the “Feasibility Requirement”),⁶ then, the Fee at Confirmation shall equal the total amount of the Regular Funds (as said term is hereinafter defined) that have been received and posted by the Trustee in the Chapter 13 Case and that remain on hand (the “Regular Funds on Hand”) as of the last business day of the month during which the confirmation hearing was concluded (the “AO 22-04 Available Funds Determination Date”), *less* \$15.00⁷ and *less* the total amount needed to fund the following payments under the Plan: (a) any Trustee percentage fee(s) then due or that will be due as of the Trustee’s next distribution date (the “Initial Post-Confirmation Distribution Date”); (b) any Filing Fee (as said term is hereinafter defined) installment payments then due or that will be due as of the Initial Post-Confirmation Distribution Date; (c) any Monthly Fixed Payment(s) then due or that will be due (including any Monthly Fixed Payment to Bankruptcy Counsel) as of the Initial Post-Confirmation Distribution Date; (d) any adequate protection payment(s) then due or that will be due as of the Initial Post-Confirmation Distribution Date; and (e) the amount necessary to bring Continuing Installment Payments⁸ for which the

² AO 22-04 does not apply to compensation awarded to special counsel retained by a Debtor in connection with a Chapter 13 Case.

³ As used herein, the term “Trustee” refers to the chapter 13 trustee serving in a Chapter 13 Case.

⁴ If, post-Confirmation, the Debtor(s)’ bankruptcy counsel is allowed compensation not provided for by § 4.3 of the Debtor(s)’ Plan (“Additional Compensation”), the order allowing the Additional Compensation may increase the Compensation being paid under § 4.3 of the Plan by the amount of the Additional Compensation. (*See generally* Local Rule 2016-1(l)-(n).)

⁵ As used herein, the term “Monthly Fixed Payments” refers to equal, monthly payments granted to a creditor under the Debtor(s) Plan to pay the creditor’s allowed claim on the terms of the Plan. Continuing Installment Payments (as said term is hereinafter defined) are not considered Monthly Fixed Payments.

⁶ If the Feasibility Requirement is not met, the Trustee shall reduce the allowed amount of the Fee at Confirmation by the amount necessary to satisfy the Feasibility Requirement.

⁷ The Trustee typically maintains a balance of \$15.00 in each Chapter 13 Case pending Plan completion (or dismissal or conversion of the Chapter 13 Case).

⁸ As used herein, the term “Continuing Installment Payments” refers to regular, periodic payments owed by the Debtor(s) that first become due postpetition that are to be paid by the Debtor(s) to a creditor while the Debtor(s)’

Trustee is the disbursing agent under the Plan *substantially current* as of the Initial Post-Confirmation Distribution Date. Unless the Plan states otherwise in part 9 thereof, and absent a timely objection to confirmation by an affected creditor or contract counter-party, Continuing Installment Payments for which the Trustee is the disbursing agent shall be *deemed* substantially current as of the AO 22-04 Available Funds Determination Date (for purposes hereof *and* for purposes of any proceeding on a post-confirmation motion for relief from stay filed by an affected creditor or contract counter-party), *so long as* (a) the Continuing Installment Payments for which the Trustee is the disbursing agent will be no more than two (2) months (the “Gap Period”) in arrears following the Trustee’s distribution(s) of Regular Funds on Hand on the Initial Post-Confirmation Distribution Date and (b) the Feasibility Requirement is satisfied. The Plan, in part 9, may specify a longer or shorter Gap Period if the Plan provides that the Fee at Confirmation shall be the AO 22-04 Available Funds, but the Trustee may shorten the Gap Period if necessary to meet the Feasibility Requirement. If the Plan provides that the Fee at Confirmation shall be the AO 22-04 Available Funds, the Trustee, in his or her sole discretion, shall determine the allowed amount of the Fee at Confirmation to be paid to Bankruptcy Counsel, in accordance with the requirements hereof (and based on the Regular Funds on Hand as of the AO 22-04 Available Funds Determination Date), and the Trustee shall update the Trustee’s automated payment system to include the allowed amount of the Fee at Confirmation prior to the Initial Post-Confirmation Distribution Date.

(4) “Sum Certain” Fee at Confirmation. If the plan specifies a sum certain Fee at Confirmation, the Plan shall not be confirmable unless, as of the close of business of the business day immediately preceding the confirmation hearing (the “Sum Certain Fee Determination Date”), the Feasibility Requirement is met and there are sufficient Regular Funds on Hand to fund the following payments under the Plan (plus \$15.00): (a) any Trustee percentage fee(s) then due or that will be due as of the Initial Post-Confirmation Distribution Date; (b) any Filing Fee installment payments then or that will be due as of the Initial Post-Confirmation Distribution Date; (c) any Monthly Fixed Payment(s) then due or that will be due (including any Monthly Fixed Payment to Bankruptcy Counsel) as of the Initial Post-Confirmation Distribution Date; (d) any adequate protection payment(s) then due or that will be due as of the Initial Post-Confirmation Distribution Date; (e) any Continuing Installment Payment(s) (for which the Trustee is the disbursing agent) then due or that will be due as of the Initial Post-Confirmation Distribution Date; and (f) the Fee at Confirmation. If the amount of the Fee at Confirmation is the only impediment to confirmation of the Plan, the Trustee shall reduce the Fee at Confirmation by the amount necessary to allow confirmation to proceed, and the confirmation order shall specify the modification to the allowed amount of the Fee at Confirmation. Bankruptcy Counsel shall be *deemed* to consent to any such reduction, and neither the Trustee nor the court need provide notice to Bankruptcy Counsel of any such reduction prior to entry of the confirmation order.

(5) Unnecessary Delays. Multiple continuances of the confirmation hearing may result in reductions to the Fee at Confirmation and/or the allowed amount of Compensation. Without limitation, if the court determines that, due to a lack of reasonable diligence by Bankruptcy Counsel, confirmation has been unnecessarily delayed, the court may reduce or disallow a requested Fee at Confirmation, without notice or opportunity for hearing. Bankruptcy

Chapter 13 Case is pending, either by disbursements made by the Trustee to the creditor under the Debtor(s)’ Plan or by payments made directly to the creditor by the Debtor(s).

Counsel shall not delay confirmation for purposes of maximizing the allowed amount of the Fee at Confirmation.

(E) Sequence of Payments Under Part 7 of the Local Form Plan.

(1) Default Payment Sequence for Regular Funds. Unless otherwise ordered, the Trustee shall make monthly disbursements of the funds received by the Trustee under § 2.1, § 2.2, or § 2.3 of a Plan (collectively, the “Regular Funds”) in accordance with the following sequence of payments (the “Default Payment Sequence”):

(a) First, the Trustee shall collect the percentage fee(s) *then due* the Trustee from the Regular Funds, until paid in full. (*See, e.g., Local Form Plan § 4.1.*)

(b) Second, if the Plan proposes to pay the Chapter 13 Case filing fee (the “Filing Fee”) through the Plan, the Trustee shall disburse the Filing Fee installment payments *then due* to the clerk of court, until paid in full. (*See, e.g., Local Form Plan § 4.2; see also Local Rule 1006-1.*)

(c) Third, the Trustee shall disburse the Plan Compensation Payments payable to Bankruptcy Counsel (if any), until the amounts *then due* are paid in full. (*See, e.g., Local Form Plan § 4.3.*)

(d) Fourth, the Trustee shall disburse adequate protection payments provided for by the Plan⁹ (if any), other Monthly Fixed Payments provided for by the Plan (if any), and Current Installment Payments for which the Trustee is the disbursing agent under the Plan (if any), until the payments *then due* are paid in full. (*See, e.g., Local Form Plan § 2.5, § 3.1, § 3.2, § 3.3, § 3.4, § 4.4, § 4.5, § 5.4, § 6.1, and pt. 9.*)

(e) Fifth, the Trustee shall disburse the amounts to be paid to holders of allowed priority claims for domestic support for which no Monthly Fixed Payment is granted (if any), until paid in full.¹⁰ (*See, e.g., Local Form Plan § 4.5.*)

(f) Sixth, the Trustee shall disburse the amounts to be paid to holders of other allowed priority unsecured claims for which no Monthly Fixed Payment is granted (if any), until paid in full. (*See, e.g., Local Form Plan § 4.4.*)

(g) Seventh, the Trustee shall disburse the amounts to be paid to holders of allowed nonpriority unsecured claims separately classified by the Plan but for which no Monthly Fixed Payment is granted (if any), until paid in full. (*See, e.g., Local Form Plan § 5.5.*)

⁹ If the court enters an order providing for pre-Confirmation adequate protection payments to a creditor and, after entry of the order, the Debtor(s) file an amended Plan that proposes to alter the amount of the court-ordered adequate protection payments, the Trustee shall continue to pay the court ordered amount unless and until such amended Plan is confirmed.

¹⁰ Debtor(s) are not required to propose Monthly Fixed Payments to holders of priority unsecured claims; however, Debtor(s) are encouraged to propose Monthly Fixed Payments to holders of priority claims for domestic support.

(h) Eighth, the Trustee shall disburse the amounts to be paid to holders of allowed nonpriority unsecured claims not separately classified by the Plan (if any), until paid in full. (*See, e.g.,* Local Form Plan § 5.1, § 5.2, and § 5.3.)

(2) Alternate Payment Sequence for Regular Funds. If the Debtor(s) in a Chapter 13 Case wish to propose an alternate sequence of payments for Regular Funds (an “Alternate Payment Sequence”), the Debtor(s) may do so in part 9 of their Plan (for non-standard provisions) or file (and serve on the Matrix¹¹) a separate motion to establish the sequence of payments for Regular Funds. The court will require that the Debtor(s)’ Plan or motion describe any Alternate Payment Sequence with specificity, and the Alternative Payment Sequence will not take effect until approved by court order (after sufficient notice and opportunity for hearing). As such, notwithstanding a Plan’s inclusion of an Alternate Payment Sequence, pre-confirmation disbursements by the Trustee, if any, shall be made in accordance with the Default Payment Sequence until the Plan is confirmed (or a separate order approving the Alternate Payment Sequence is entered).

(3) Disbursements Proportionate Within Sequence Position. If, on a Trustee distribution date, the available Regular Funds are insufficient to make all payments to creditors then due under the Debtor(s)’ Plan (collectively, the “Due Payments”), the Trustee shall allocate the available Regular Funds in accordance with the applicable sequence of payments. If, on a Trustee distribution date, the available Regular Funds are not enough for the Trustee to make all Due Payments having the same rank in the applicable payment sequence, the Trustee shall disburse the available Regular Funds allocable to such rank on a proportionate basis.

(4) Distribution Sequence for Additional Funds. Unless otherwise ordered, the Trustee shall disburse funds received by the Trustee pursuant to § 2.4 or part 9 of a Plan (collectively, “Additional Plan Funds”), if any, in the distribution sequence specified by the Plan.¹² (*See* Local Form Plan § 2.4 and pt. 9.) If the Plan does not include a sequence of payments for Additional Plan Funds, and no order respecting the disbursement of the Additional Plan Funds received by the Trustee has entered in the Chapter 13 Case, the Additional Plan Funds shall be held by the Trustee pending further order of the court. If the Trustee receives funds other than under a Plan, and no order has entered respecting the disbursement of said funds in the Chapter 13 Case, the Trustee shall hold the funds pending further order of the court and may file a motion for authority to disburse such funds.

(5) Disbursements Less than \$15.00. The Trustee is authorized, but not required, to disburse any payment to a creditor that is less than \$15.00.¹³

(6) Objecting to the Sequence of Payments Proposed by a Plan. If the

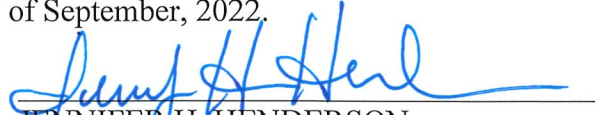
¹¹ As used herein, “Matrix” refers to the official creditor mailing matrix for a Chapter 13 Case, which is accessible via the court’s electronic filing system.

¹² If the Debtor(s)’ Plan provides for Additional Plan Funds in § 2.4, the Debtor(s) may include a sequence of payments for such funds in § 2.4.

¹³ *See* Fed. R. Bankr. P. 3010(b). Pursuant to Bankruptcy Rule 3010(b), funds not distributed shall accumulate and shall be paid whenever the accumulation aggregates \$15.00 (and any funds remaining disbursed with the final payment).

Trustee, a creditor, or other interested party opposes the sequence of payments proposed in the Debtor(s)' Plan (whether it is the Default Payment Sequence incorporated by reference in part 7 or an Alternate Payment Sequence specified in part 9), the party must timely file an objection to confirmation in the Debtor(s)' Chapter 13 Case.

DONE AND ORDERED this the 30th day of September, 2022.


JENNIFER H. HENDERSON
UNITED STATES BANKRUPTCY JUDGE