

November 25, 2025

National Bankruptcy Conference Proposal

Statutory Changes to Address the Payment of Attorney's Fees in Individual Chapter 7 Cases

Introduction

All constituents in bankruptcy benefit from debtors being represented by competent counsel. Such representation not only ameliorates serious access to justice issues that currently exist in chapter 7 cases for debtors, but also benefits the courts, creditors, the debtors' bar and all parties in interest by having debtors represented and advised by counsel who are subject to rules of professional conduct and discipline by the court and state bar organizations.

In the Conference's Study of Individual Bankruptcy Cases and the Consumer Bankruptcy Reform Act (approved for release in November 2022), the Conference recommended the following:

In order to improve effective and affordable access to the consumer bankruptcy system and establish a uniform system for the approval of attorney fees in consumer bankruptcy cases, the Conference supports amendments to the Code that would permit, subject to court approval, more flexible fee arrangements, including optional installment payments, for all attorney fees in connection with a consumer bankruptcy case.

The proposed new section 708 and amended section 526(d) respond directly to the most significant practical barrier preventing many individual chapter 7 debtors from obtaining competent counsel before filing by permitting the payment and collection of attorney's fees postpetition under a court-approved process.

Section 708(a)

The "notwithstanding" clause of the opening paragraph of section 708(a) is intended to harmonize potential conflicts of these proposed changes with other Code provisions, including, among others, section 362, 524, 526, and 727, by expressly authorizing the court-approved payment arrangements contemplated here. The clause ensures that reasonable post-petition payment or communication by counsel with the debtor under a court-approved agreement will not be treated as a violation of the automatic stay or the discharge injunction, while still preserving the protective requirements of the debt relief agency sections 526 through 528 and the court's oversight authority under section 329.

Section 708(a)(1)

Section 708(a)(1) sets forth conditions that an agreement must satisfy to qualify for enforceability. These conditions focus on disclosure and transparency and establish reasonable terms on which a debtor may pay an attorney's court-approved fees and the attorney's limits to collect the same. The subsection creates a structure to facilitate a debtor's payment of the attorney's fees under the court's supervision and precludes certain terms such as those granting a lien in property to secure the fees or permitting the assignment or factoring of fees. If the debtor consents to the entry of an income deduction order for payment of the fee to be charged, that must be noted in the fee agreement. (The language used to describe an income deduction order is derived from existing section 1325(c)).

Section 708(a)(2)

Section 708(a)(2) allows the court to determine, among other things, the means for, and scope of, enforceability of the fee agreement. It incorporates the standard for review ascribed in section 329 that the fee represents the reasonable value of the services rendered or to be rendered in the case. It allows the court to void any term that is inconsistent with the statute and to determine the extent to which the court will enforce the obligation to pay any approved fees.

The mandated judicial review for reasonableness and the express authority to void noncompliant terms under section 708(a)(2)(A) and (B) provide courts with the necessary tools to curb abuse while allowing local flexibility to develop best practices. For example, a court could authorize installment payments, the use of an ACH deposit, issue an income deduction order with the debtor's consent, or another method that might assist the debtor in paying the fees and be permissible under applicable nonbankruptcy law. The court retains authority to enforce the court-approved payment terms until case closing, but nonpayment cannot be used to deny or revoke discharge or to hold the debtor in contempt.

Section 708(b)

Section 708(b) provides that an attorney who agrees to be paid postpetition pursuant to an approved agreement is not a "creditor" for purposes of the Truth in Lending Act (15 U.S.C. § 1602(g)). Section 708(a) ensures that debtors receive disclosures that clearly and accurately describe the terms and conditions of the fee agreement and are tailored to the specific requirements of bankruptcy representation.

Fee Approval Procedures

The new section 708 does not establish procedures for the filing or consideration of any motion to approve the payment of fees under a prepetition fee agreement. Rather, those procedures are best addressed by the Federal Rules of Bankruptcy Procedure and the local rules of each court. For example, a court or district could establish procedures by standing order or local rule to facilitate the timely filing, review, and approval of any motions filed under section 708. Such procedures are commonly used in the context of reaffirmation agreements under section 524 of the Bankruptcy Code and the approval of attorney's fees in chapter 13 cases.

Section 526(d)

The proposed amendment to section 526(d) of the Bankruptcy Code clarifies that other sections of the Bankruptcy Code restricting and regulating the activities of debt relief agencies do not apply to agreements under the new section 708. Section 708 would expressly permit a debt relief agency to advise a debtor concerning and to receive payments under a fee agreement that fully complies with the new section 708.

Conclusion

The proposed sections 708 and 526(d) offer a targeted solution to a well-recognized problem in consumer bankruptcy practice. They promote access to qualified counsel through a transparent, court-supervised process that safeguards debtors' fresh starts, respects the discharge, and equips courts to oversee and approve reasonable fee arrangements. Importantly, these provisions are intended to strike a balance that protects debtors while also providing a reasonable mechanism for reliably paying counsel that will hopefully encourage the participation of the most competent members of the debtors' bar.

The proposed amendments are intentionally designed to provide maximum flexibility for implementation by bankruptcy courts and districts nationwide. Recognizing the diversity of local practice, these changes establish a uniform framework of core protections and principles while leaving each court free to tailor procedures, orders, and forms to the needs and realities of its own bar, debtor community, and administrative resources and caseloads. Among other issues, this approach allows courts to determine how best to review and approve section 708 agreements, how and whether to employ income deduction orders, limits on keeping cases open for administrative purposes, and what local guidance to issue to practitioners. The statutory changes invite courts to develop procedures that fit their specific circumstances while maintaining uniform national principles of transparency, fairness, and judicial oversight.

That said, effective implementation may be aided by further guidance and education. The Conference may wish to propose to the Advisory Committee on Bankruptcy rule amendments or model forms such as sample retention agreements, fee approval motions, and income deduction order templates to promote consistency and understanding among courts and practitioners. Early outreach and training will be essential to ensure that the statute fulfills its access-to-justice purpose without unintended administrative burdens.

Add new section 708

§ 708 Debtor's payment of compensation for representation

(a) Notwithstanding any other provision of this title, a prepetition agreement between an individual debtor and an attorney to represent the debtor in the case or in connection with the case, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title, is enforceable against the debtor only if—

(1) such agreement—

(A) is enforceable under applicable nonbankruptcy law;

(B) is in writing and was signed by the debtor before the date of the filing of the petition;

(C) is filed with the court, together with the statement required by section 329(a) of this title;

(D) complies with the material requirements of section 526, section 527, and section 528;

(E) fully discloses the fee to be charged, the services rendered or to be rendered, and that the agreement is intended to be enforceable notwithstanding a discharge granted under section 727;

(F) specifies the timing and method of payment of such fee, including whether the debtor consents to the entry of an order directing the entity from whom the debtor receives income to pay a portion of such income to the debtor's attorney until the fee is paid;

(G) prohibits any increase, interest, or credit insurance on such fee;

(H) prohibits assignment or factoring of any claim against the debtor under the agreement or other collection of such claim by a person other than the attorney;

(I) does not provide for a lien on any property of the debtor or of the debtor's dependents or any property of the estate; and

(2) the court—

(A) finds that such agreement complies with the requirements of paragraph (1) or voids any noncompliant provision;

(B) determines that the fee disclosed in such agreement does not exceed the reasonable value of the services under the agreement;

(C) specifies the terms on which such fee may be paid and, subject to the debtor's consent, may order any entity from whom the debtor receives income to pay a portion of such income to the debtor's attorney until the fee is paid; and

(D) retains jurisdiction and authority to enforce such terms until the case is closed, but failure to pay any such fees is not grounds to deny the discharge under section 727(a)(6) of this title, to revoke a discharge under section 727(d)(3) of this title, or to issue contempt sanctions against the debtor.

(b) An attorney who enters into an agreement under this section is not a "creditor" with respect to the agreement for purposes of 15 USC § 1602(g).

* * *

Add to Section 526(d)

(3) prohibit or restrict a debt relief agency from advising an assisted person to enter into, or to make payments pursuant to, an agreement under section 708 of this title.