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7th Circuit protects fees for attorneys

Bankruptcy lawyers won't have to wait to collect payment

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Bankruptcy attorneys do not have to wait at the end of the line to collect their fees when they represent individual debtors who are repaying their unsecured creditors in installments, a federal appeals court held.

The 7th U.S. Circuit Court of Appeals affirmed a bankruptcy judge's finding that attorneys for clients reorganizing their debts under Chapter 13 of the U.S. Bankruptcy Code are unsecured creditors entitled to be paid their fees before or while their clients' other unsecured creditors are receiving payments.

A contrary ruling by the court could have blocked attorneys from collecting their fees until as long as three or five years after they file a Chapter 13 petition for a client.

In Chapter 13 proceedings, individuals with a steady paycheck or another regular source of income can keep their assets but must repay all or some of their debts from their projected disposable income under a court-approved plan.

The length of the plan — called the "applicable commitment period" in the Bankruptcy Code — is five years for debtors who earn at least the median income for their state. The commitment period for debtors who make less than the median income is three years.

In June 2025, Ahmed Alayah and Stephen Falkner filed separate Chapter 13 petitions in bankruptcy court in Chicago. They both live in Illinois and both earn a below-median income.

Both petitions listed the city of Chicago as an unsecured creditor. Alayah owes the city about $12,500 and Falkner owes it more than $7,700.

The men filed final reorganization plans in September. Both plans call for attorney fees to be paid before nonpriority unsecured claims are paid. Nonpriority unsecured claims are debts that are not given preference in bankruptcy proceedings and that are not backed by collateral.

In October, U.S. Bankruptcy Judge Donald R. Cassling of the Northern District of Illinois overruled the city's objections and confirmed the reorganization plans. The city appealed, and a panel of the 7th Circuit affirmed Cassling's decision Wednesday.

The panel rejected the city's argument that an amendment to Chapter 13 prohibits paying debtors' attorneys fees before paying unsecured creditors during the commitment period.

Congress amended Section 1325(b)(1)(B) of the Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to change the conditions under which a Chapter 13 reorganization plan may be confirmed over the objections of an unsecured creditor whose claim will not be paid in full.

The prior version of Section 1325(b)(1)(B) stated a judge may confirm the plan if "all of the debtor's projected disposable income to be received" in a given period of time was going to be "applied to make payments under the plan."

The current version allows confirmation over the objections of the creditor if "all of the debtor's projected disposable income" is to be "applied to make payments to unsecured creditors under the plan."

In its appeal, the city argued the addition of the words "to unsecured creditors" blocks Alayah and Falkner's attorneys from receiving any of their clients' projected disposable income because Chapter 13 attorneys are not unsecured creditors.

But the city needs to read Section 1325(b)(1)(B) in context, Judge Michael Y. Scudder Jr. wrote for the panel.

"The Bankruptcy Code as a whole makes clear that Chapter 13 plans may provide payments for attorneys' fees during a commitment period," he wrote. "Indeed, it requires plans to do just that."

For example, Section 1322(a)(2) requires that a plan "provide for the full payment … of all claims entitled to priority," including attorney fees, Scudder wrote.

And Section 1326(b)(1), he continued, requires priority claims to be paid before "or at the time of each payment to creditors under the plan."

Joining the opinion were Judges Thomas L. Kirsch II and Rebecca Taibleson.

The case is *In re Ahmed Alayah and Stephen Falkner; Appeals of City of Chicago,* Nos. 25-2878 and 25-2879.

Michael Y. Scudder Jr.

Michael A. Miller of The Semrad Law Firm LLC, also known as DebtStoppers, argued the case before the 7th Circuit on behalf of Alayah and Falkner.

Miller said the ruling gives working families access to legal representation in bankruptcy court.

"Most low-income debtors can't pay attorneys up front; their fees are paid through the plan over time, which is what makes Chapter 13 work in the first place," he said in a statement. "The Court refused to let three words from a 2005 amendment quietly rewrite decades of bankruptcy practice."

Stephen G. Collins of the Corporation Counsel's Office argued the case for the city of Chicago.

"The City pursued this case to protect its most vulnerable residents," Law Department spokeswoman Kristen Cabanban said in a statement. "The vast majority of Chapter 13 cases are dismissed without a debt discharge, leaving individuals with even more debt than before filing, and thousands of dollars diverted into the attorneys' pockets."